## REVISED CODES OF MONTANA

1947

REPLACEMENT
VOLUME FOUR
PART 2

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# REVISED CODES OF MONTANA

1947

ANNOTATED

NINE VOLUMES

COMPILED, REVISED AND ANNOTATED
UNDER CHAPTER 184, LAWS OF 1945 AND CHAPTER 266, LAWS OF 1947
AND PUBLISHED UNDER CHAPTER 43, LAWS OF 1947

I. W. Choate
Wesley W. Wertz
CODE COMMISSIONERS

REPLACEMENT VOLUME 4 PART 2

Public Utilities to Schools

Containing the Permanent Laws of the State in Force at the Close of the Thirty-seventh Legislative Assembly of 1961

Publishers

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## PREFACE

The State of Montana continues to grow in its diversification of industries, in the assumption of new interests, cultural and business, by its expanding population. So indeed does its jurisprudence, both statutory and case law, develop to meet the changing times.

The original Volume Four of the 1947 REVISED CODES OF MONTANA was first replaced after the 1953 session of the Legislative Assembly. Since then over 400 pages of new laws, amendments and annotations have been compiled into the supplement for this volume, so that after the 1961 legislative session the supplement could no longer be inserted conveniently into the pocket provided in the binding of the parent volume.

For this reason and because of the substantial amounts of new and amendatory legislation in the fields of professional regulation, public health and safety, and school law, a new issue of Volume Four became essential under the replacement program approved by the State authorities and the Montana Bar Association. The 1962 edition of Replacement Volume Four has been published in two parts in order to provide books that are not too cumbersome and to permit supplementation for a longer period. Part 1 includes Titles 56 through 69 and Part 2 contains Titles 70 through 75.

The two books constituting Replacement Volume Four now contain all existing laws in the titles specified above, through the regular session of the Thirty-seventh Legislative Assembly, and all notes and annotations have been brought to date. Excluded are obsolete laws, local and special laws, appropriation acts, resolutions, and enacting and repealing clauses.

The arrangement and numbering system of the original volume have been retained; hence the General Index may be used as before in locating particular laws. Legislative history references have been brought to date and no changes have been made in the general style used heretofore.

Annotations have been added covering decisions of the Supreme Court of Montana and of the United States Supreme Court and other Federal courts through volume 137 Montana Reports, volume 369 Pacific 2d, volume 367 United States Reports, volume 6 Lawyers' Edition 2d, volume 81 Supreme Court Reporter, volume 298 Federal Reporter 2d, volume 201 Federal Supplement, volume 28 Federal Rules Decisions and volume 82 American Law Reports 2d.

To Wesley W. Wertz, Code Commissioner of the 1947 Codes, we extend our thanks for his advice and able assistance in the preparation of this Replacement.

The Publishers

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## PUBLIC UTILITIES

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## PUBLIC SERVICE COMMISSION—REGULATION OF PUBLIC UTILITIES

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70-134. Traveling expenses of commission.70-135. Effect of invalidity of part of law.

70-101. (3879) Creation of public service commission. A public service commission is hereby created, whose duty it shall be to supervise and regulate the operations of the public utilities hereinafter named, such supervision and regulation to be in conformity with this act.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R. C. M. 1921.

## Constitutionality

Sections 70-101 et seq., creating a public service commission and defining its powers, are constitutional. Public Service Commission v. City of Helena, 52 M 527, 159 P 24.

Regulations made by the public service commission must be reasonable in order to be valid, and any regulation which imposes upon a city an obligation which is invalid is not reasonable. Public Service Commission v. City of Helena, 52 M 527, 159 P 24.

The act conferring authority upon the public service commission must be construed in harmony with the theory of self-government in cities, and the retention of police power by the state. Public Service Commission v. City of Helena, 52 M 527, 159 P 24.

Inasmuch as a franchise contract made in 1912 between a city and a gas company must be presumed to have been entered into with knowledge that the state could thereafter enact legislation toward exercising the power of rate regulation reposed in it, and thus change the rates fixed by the contract, this act is not open to attack on the ground that it impairs the obligation of the contract made the year before. State ex rel. Billings v. Billings Gas Co., 55 M 102, 111, 173 P 799, distinguished in 99 M 465, 478, 44 P 2d 735. See also Great Northern Util. Co. v. Public Service Commission, 88 M 180, 207, 293 P 294, for discussion of constitutionality of the Public Service Commission Act.

## Franchise Ordinance

An ordinance granting a public utility franchise after the enactment of the public service commission law is not invalid merely for the reason that such act vests exclusive jurisdiction in the commission, but is valid until the commission sees fit to act; until then the rate of compensation payable by the company is valid and binding. City of Baker v. Montana Petroleum Co., 99 M 465, 44 P 2d 735.

## Powers of Commission

In the enactment of this law the legislature intended to provide a comprehensive and uniform system of regulation and control of public utilities, by a specially created tribunal, through which the state itself exercises its sovereign power. State ex rel. Billings v. Billings Gas Co., 55 M 102, 112, 173 P 799.

The public service commission is a creature of, and clothed with only such powers as are clearly conferred upon it, by the statute to which it owes its being. Great Northern Util. Co. v. Public Service Commission, 88 M 180, 207, 293 P 294.

The legislature in enacting the Public Service Commission Act intended not only to empower the commission to regulate charges or fix rates, but also to see to it that reasonable service is rendered by the utility and that its equipment is reasonably adequate. Great Northern Util. Co. v. Public Service Commission, 88 M 180, 207, 293 P 294.

The public service commission, under its power to regulate a public utility is clothed with authority not only to fix maximum, but also minimum or precise rates. Great Northern Util. Co. v. Public Service Commission, 88 M 180, 293 P 294.

An order of the public service commission directing an electric power company furnishing electricity to a small town to install a telephone service for the convenience of its 225 customers, held, not unlawful or unreasonable. Tobacco River Power Co. v. Public Service Commission, 109 M 521, 533, 98 P 2d 886.

## Public Utilities Defined

An irrigation company organized for the purpose of supplying water for the irrigation of agricultural lands is not a "public utility" within the meaning of this act, and is therefore not subject to supervision and regulation by the public service commission. (Mr. Chief Justice Brantly and Mr. Justice Galen dissenting.) State v. Boyle, 62 M 97, 204 P 378.

When one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use and must submit to control by the public for the common good to the extent of the interest he has thus created. Great Northern Util. Co. v. Public Service Commission, 88 M 180, 207, 293 P 294.

## References

Doney v. Northern Pacific Ry. Co., 60 M 209, 237, 199 P 432; Billings Util. Co. v. Public Service Commission, 62 M 21, 29, 203 P 366; City of Billings v. Public Service Commission, 67 M 29, 35, 214 P 608.

## Collateral References

Public Service Commissions 1.
73 C.J.S. Public Utilities § 32.
See generally, 43 Am. Jur. 700, Public Utilities and Services (Public Service Commissions), §§ 192 et seq.

70-102. (3880) Railroad commissioners as ex officio commission. The board of railroad commissioners of the state of Montana shall be ex officio the public service commission hereby created, and for the purposes of this act shall be known and styled "Public Service Commission of Montana." It shall provide itself with a seal bearing these words, by which its official acts shall be authenticated in all cases where a seal is required; and in the name as above set forth, it may sue and be sued in the courts of the state and of the United States. The secretary of the railroad commission of Montana shall act as secretary of the commission hereby created, but the business of the public service commission shall be kept entirely separate from that of the railroad commission.

History: En. Sec. 2, Ch. 52, L. 1913; re-en. Sec. 3880, R. C. M. 1921.

## Cross-Reference

Railroads, powers with respect to, sec. 72-114 et seq.

70-103. (3881) "Public utility" defined. The term "public utility," within the meaning of this act, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, or any part of a plant or equipment, within the state, for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal, heat, street-railway service, light, power in any form or by any agency, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns and villages, or elsewhere, telegraph or telephone service; and the public service commission is hereby invested with full power of supervision, regulation, and control of such utilities, subject to the provisions of this act, and to the exclusion of the jurisdiction, regulation, and control of such utilities by any municipality, town, or village.

History: En. Sec. 3, Ch. 52, L. 1913; re-en. Sec. 3881, R. C. M. 1921.

## Intent of Act

It was the intention of the legislature to go no further than to provide that, within the limited sphere of its jurisdiction, the public service commission may make reasonable regulations which the city must heed, and to that extent only is the authority of the city superseded. It was not intended to take from the city the active management of its water plant, or the authority to appoint the proper officers and employees to operate it, or to interfere with such officers in the proper discharge of their duties. Public Service Commission v. City of Helena, 52 M 527, 541, 159 P 24.

## Public Utilities Defined

A city engaging in the water business is a public utility. Public Service Commission v. City of Helena, 52 M 527, 159 P 54; Leischner v. Knight, 135 M 109, 112, 337 P 2d 359, 361.

An irrigation company organized for the purpose of supplying water for the irrigation of agricultural lands is not a "public utility" within the meaning of this act and is therefore not subject to supervision and regulation by the public service commission. (Mr. Chief Justice Brantly and Mr. Justice Galen dissenting.) State v. Boyle, 62 M 97, 204 P 378.

Where one corporation acquires and holds all of the stock of another corporation, save a share each held by directors for the purpose of preserving the corporate

organization of the latter the two corporations in effect become merged, and the holding company will be deemed to own and control the other, and where a foreign corporation licensed to do business in Montana conveyed natural gas by pipeline from a neighboring state into this state and furnished it to a domestic corporation whose entire capital stock with the exception of five of its 2,500 shares it owned, for distribution to its customers, was a public utility within the meaning of this section, and as such subject to the jurisdiction of the public service commission of Montana and therefore required to furnish such commission annual reports of its operations. Gallatin Natural Gas Co. v. Public Service Commission, 79 M 269, 275, 256 P 373.

## Water May Be Clothed with Public Interest

In an action to enjoin the inhabitants of a town from further use of a ditch which they had tapped for domestic uses over a period of years, considerable argument was made that plaintiffs were a public utility under this section, and therefore subject to jurisdiction of public serv-

ice commission, but the commission was not a party to the action and court did not pass on the point, but did hold that property (including water) may be clothed with a public interest depending upon the extent and character of the use, making it a public consequence and affecting the community at large. Sherlock v. Greaves, 106 M 206, 221, 76 P 2d 87.

## References

State ex rel. Billings v. Billings Gas Co., 55 M 102, 107, 173 P 799; Doney v. Northern Pacific Ry. Co., 60 M 209, 237, 199 P 432; Billings Util. Co. v. Public Service Commission, 62 M 21, 29, 203 P 366; City of Billings v. Public Service Commission, 67 M 29, 35, 214 P 608; Great Northern Util. Co. v. Public Service Commission, 88 M 180, 207, 293 P 294; State ex rel. Olsen v. Public Service Commission, 129 M 101, 283 P 2d 602, 604.

## Collateral References

Public Service Commissions 2 et seq. 73 C.J.S. Public Utilities § 1 et seq. 43 Am. Jur. 571, Public Utilities and Services, § 2.

70-104. (3882) Power to prescribe rules of procedure—judicial power. In addition to the modes of procedure hereinafter prescribed in particular cases and classes of cases, said commission shall have power to prescribe rules of procedure, and to do all things necessary and convenient in the exercise of the powers by this act conferred upon the commission; provided, that nothing in this act shall be construed as vesting judicial powers on said commission, or as denying to any person, firm, association, corporation, municipality, county, town, or village the right to test, in a court of competent jurisdiction, the legality or reasonableness of any fixed order made by the commission in the exercise of its duties or powers.

History: En. Sec. 4, Ch. 52, L. 1913; re-en. Sec. 3882, R. C. M. 1921.

## Commission May Not Adjudicate Water Rights

Where the district court issued a writ of prohibition restraining the commission from entertaining a complaint of farmers that a hydroelectric company, by storing water for use in its operations incident to generating electricity for public use was depriving them of water for irrigation purposes, held, on application for writ of supervisory control to annul the writ, that the farmers were asking in effect for an adjudication of water rights, a judicial function belonging to the court which, under this section, the commission is precluded from exercising. State ex rel. Public Service Commission v. District Court, 107 M 240, 241, 84 P 2d 335.

## Legislature Not to Exercise Judicial Function through Commission

Under sec. 1, Art. IV of the Constitution, prohibiting either one of the three departments of the state government from exercising any of the powers properly belonging to either of the others, the legislature cannot, through the medium of the public service commission, exercise judicial powers. State ex rel. Public Service Commission v. District Court, 107 M 240, 242, 84 P 2d 335.

## Collateral References

Public Service Commissions ₹ 8.
73 C.J.S. Public Utilities § 49.
43 Am. Jur. 700, Public Utilities and Services, § § 193 et seq.

70-105. (3883) Public utilities to furnish service for reasonable charges. Every public utility is required to furnish reasonably adequate service and

facilities. The charge made by any public utility for any heat, light, power, water, telegraph, or telephone service, produced, transmitted, delivered, or furnished, or for any service to be rendered as or in connection with any public utility, shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.

History: En. Sec. 5, Ch. 52, L. 1913; re-en. Sec. 3883, R. C. M. 1921.

### Cross-References

Construction of electric lines, regulations, secs. 24-101 to 24-144.

Electrical energy producers tax, sec. 84-1601 et seq.

Natural gas distributors tax, sec. 84-1201 et seq.

## Charge for Tapping Water Mains

A flat rate charge by the city for the "service" of tapping water mains located entirely within the public right of way, based on an average cost experience over a period of years yielding no over-all profit to the city, is reasonable and valid under the provisions of this section. Leischner v. Knight, 135 M 109, 337 P 2d 359.

### References

State ex rel. Billings v. Billings Gas Co., 55 M 102, 107, 173 P 799; Great Northern Util. Co. v. Public Service Commission, 88 M 180, 293 P 294; State ex rel. Olsen

v. Public Service Commission, 131 M 272, 309 P 2d 1035, 1038.

### Collateral References

Corporations 3821/2; Electricity 11; Telegraphs and Telephones 33(1); Waters and Water Courses 203(6).

29 C.J.S. Electricity §§ 24-28, 29-37; 73 C.J.S. Public Utilities § 13; 86 C.J.S. Telegraphs, Telephones, Radio, and Television § 86; 94 C.J.S. Waters § 293.

43 Am. Jur. 705, Public Utilities and Services, §§ 197 et seq.

Discrimination between property within and that outside municipality or other governmental district as to public service or utility rates. 4 ALR 2d 595.

Right of public utility to discontinue line or branch on ground that it is unprofitable, 10 ALR 2d 1121.

Right to cut off water supply because of failure to pay sewer service charge. 26 ALR 2d 1359.

Variation of utility rates based on flat and meter rates. 40 ALR 2d 1331.

70-106. (3884) Power of commission to ascertain property values. The commission may, in its discretion, investigate and ascertain the value of the property of every public utility actually used and useful for the convenience of the public. In making such investigation the commission may avail itself of all information contained in the assessment rolls of various counties, and the public records of the various branches of the state government, or any other information obtainable, and the commission may at any time of its own initiative make a revaluation of such property.

History: En. Sec. 6, Ch. 52, L. 1913; re-en. Sec. 3884, R. C. M. 1921.

## Commission May Not Fix Rates so Low as to Take Property

The public service commission, in regulating rates should, under this section ascertain the present fair value of the utility; rates must be fair and reasonable, as well as the return on its investment for services rendered; the commission cannot under the law fix rates so low as to result in taking of property without just com-pensation to the owner. No particular method is required but it must be done under proper legal procedure and restrictions. Tobacco River Power Co. v. Public Service Commission, 109 M 521, 528, 98 P 8d 886.

## Investigation by Commission

The provision of this section authorizing the commission to make an investigation is permissive only and it is not mandatory that the commission make its separate investigation. State ex rel. Olsen v. Public Service Commission, 131 M 104, 308 P 2d 633, 639. (Dissenting opinion on this point, 131 M 104, 308 P 2d 633 at

## Method of Ascertaining Value of Prop-

Commission did not err in fixing the value of the plant where they considered reproduction cost new less depreciation; the original cost less depreciation; and the assessed value so far as taxable property was concerned. State ex rel. Olsen v. Public Service Commission, 131 M 104, 308 P 2d 633, 637. The statute is silent as to what methods the commission must use in ascertaining the value of the property and the commission has a wide latitude in choosing a method of arriving at the value of the plant used and useful in serving the public. State ex rel. Olsen v. Public Service Commission, 131 M 104, 308 P 2d 633, 637.

## Value of Property

While the statute does not establish a formula for arriving at fair value, it does require such value to be found and used as a base in fixing rates. The reasonableness and justness of the rates must be related to this finding of fair value. State ex rel. Olsen v. Public Service Commission, 131 M 272, 309 P 2d 1035.

## Value of Property at Time of Trial, Proper

In arriving at the value of the utility's

property, the cost of reproduction new, less depreciation, is usually regarded as one of the most important, if not the dominant factor, and in an action to enjoin the commission from enforcing an order reducing rates, the court properly admitted evidence of that character, and determined the question of value as of the date of trial rather than upon that of the order made two years previous, because a number of changes had taken place in the interval. Tobacco River Power Co. v. Public Service Commission, 109 M 521, 529, 98 P 2d 886.

## Collateral References

Public Service Commissions 6. 73 C.J.S. Public Utilities § 39.

### Law Review

"Fair value" test in Montana public utility rate regulation, 22 Mont. L. Rev. 65 (Fall 1960).

70-107. (3885) Books, accounts and records of public utilities. Every public utility shall keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted.

Every public utility engaged directly or indirectly in any other businesses than those mentioned in section 70-103 shall, if required by the commission, keep and render separately to the commission, in like manner and form, the accounts of all such other business, in which case all the provisions of this act shall apply with like force and effect to the books, accounts, papers, and records of such other business.

The commission shall cause to be prepared suitable blanks for carrying out the purposes of this act, and shall, when necessary, furnish such blanks to each public utility.

No public utility shall keep any other books, accounts, papers, or records of the business transacted, than those prescribed or approved by the commission. Each public utility shall have an office in one of the towns, villages, or cities in this state, in which its property, or some part thereof, is located, and shall keep in said office all such books, accounts, papers, and records as shall be required by the commission to be kept within the state. No books, accounts, papers, or records, required by the commission to be kept within the state, shall at any time be removed from the state, except upon such conditions as may be prescribed by the commission.

History: En. Sec. 7, Ch. 52, L. 1913; re-en. Sec. 3885, R. C. M. 1921.

## Cross-Reference

Contributions for political purposes forbidden, sec. 94-1444.

## Collateral References

Corporations  $\textcircled{=}382\frac{1}{2}$  and other specific topics.

73 C.J.S. Public Utilities § 4.

70-108. (3886) Annual report to public service commission. The accounts of all public utilities shall be closed annually on either the 30th day of June or the 31st day of December, a balance sheet taken promptly there-

from, and full annual reports of the business of such utility made to the public service commission not later than the 15th day of the first following September if such accounts are closed on the 30th day of June, and not later than the 15th day of March of the first following year when such accounts are closed on the 31st day of December. The reports shall be in such form as prescribed by the commission, and shall contain all the information deemed by the commission necessary for the proper performance of its duties. The commission may at any time call for desired information omitted from such reports, or not provided for therein, whenever, in the judgment of the commission, such information is necessary.

History: En. Sec. 7, Ch. 52, L. 1913; L. 1929; amd. Sec. 1, Ch. 160, L. 1945; amd. Sec. 1, Ch. 186, L. 1919; re-en. Sec. amd. Sec. 1, Ch. 24, L. 1947. 3886, R. C. M. 1921; amd. Sec. 1, Ch. 172,

70-109. (3887) Right to examine books, records, etc. Any commissioner, or any person or persons authorized by the commission, shall have the right to examine the books, accounts, records, and papers of any public utility for the purposes of determining their correctness, and whether they are being kept in accordance with the rules and system prescribed by the commission.

History: En. Sec. 7, Ch. 52, L. 1913; re-en. Sec. 3887, R. C. M. 1921.

70-110. (3888) Failure of public utility to make reports or permit examinations. Any officer, agent, or person in charge of the books, accounts, records, and papers, or any of them, of any public utility, who shall refuse or fail, for a period of thirty days, to furnish the commission with any report required by the provisions of this act, and any officer, agent, or person in charge of any particular books, accounts, records, or papers relating to the business of such public utility, who shall refuse to permit any commissioner or other person duly authorized by the commission, to inspect such books, accounts, records, or papers on behalf of the commission, shall be subject to a fine of not less than one hundred dollars nor more than five hundred dollars, such fine to be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction; and each day's refusal or failure on the part of such officer, agent, or person in charge, shall be deemed a separate offense, and be subject to the penalty herein prescribed.

History: En. Sec. 8, Ch. 52, L. 1913; re-en. Sec. 3888, R. C. M. 1921.

Collateral References Corporations ≈323. 19 C.J.S. Corporations § 836.

## References

City of Billings v. Public Service Commission, 67 M 29, 37, 214 P 608.

70-111. (3889) Records and reports of commission. The commission shall make and publish annual reports for each calendar year, showing its proceedings, which reports shall, as nearly as may be, conform in a general way to those of the railroad commission of the state, and be made at the same time. All the reports, records, accounts, files, papers, and memoranda of every nature in the possession of the commission shall be open to the

public at all reasonable times, subject to the exception that when the commission deems it necessary, in the interest of the public, it may withhold from the public any facts or information in its possession for a period of not more than ninety days after the acquisition of such facts or information.

History: En. Sec. 9, Ch. 52, L. 1913; re-en. Sec. 3889, R. C. M. 1921.

70-112. (3890) Commercial units of product or service—standard of measurement—examination and testing. The commission shall ascertain and prescribe for each kind of public utility suitable and convenient commercial units of product or service. These shall be lawful units for the purposes of this act.

The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage, or other conditions pertaining to the supply of the product or service rendered by any public utility, and prescribe reasonable regulations for examination and testing of such product or service and for the measurement thereof.

The commission shall provide for the examination and testing of any and all appliances used for the measuring of any product or service of a public utility. Any consumer or user may have any such appliances tested upon payment of the fees fixed by the commission. The commission shall establish and declare reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, which fees, however, shall be paid by the public utility and repaid to the complaining party, if the quality or quantity of the product, or the character of the service, be found by the commission defective or insufficient in a degree to justify the demand for testing; or the commission may apportion the fees between the parties as justice may require.

The commission may, in its discretion, purchase such materials, apparatus, and standard measuring instruments for such examinations and tests as it may deem necessary.

The commission, its agents, experts, or examiners, shall have the power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided in this act, and to set up and use on such premises any apparatus and applicances and occupy reasonable space therefor. Any public utility refusing to allow such examinations to be made, as herein provided, shall be subject to the penalties prescribed in section 70-110.

History: En. Sec. 10, Ch. 52, L. 1913; re-en. Sec. 3890, R. C. M. 1921.

70-113. (3891) Schedules of rates, tolls and charges. Every public utility shall file with the commission, within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls, and charges which it has established, and which are in force at the time, for any service performed by it within the state, or for any service in connection therewith, or performed by any public utility controlled or operated by it. The rates, tolls, and charges shown on such schedules shall not exceed

the rates, tolls, and charges in force at the time of passage of this act. Every public utility shall file with, and as a part of such schedule, all rules and regulations that in any manner affect the rates charged or to be charged for any service. A copy of so much of said schedule as the commission shall deem necessary for the use of the public shall be printed in plain type, and kept on file in every station or office of such public utility, where payments are made by the consumers or users, open to the public, in such form and place as to be readily accessible to the public, and as can be conveniently inspected.

When a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedule shall in like manner be printed and filed with the commission, and so much thereof as the commission shall deem necessary for the use of the public shall be filed in every such station or office as prescribed in the first paragraph of this section.

No change shall thereafter be made in any schedule, including schedules of joint rates, except upon twenty days' notice to the commission, and all such changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof ten days prior to the time the same are to take effect; provided, that the commission, upon application of any public utility, may prescribe a less time within which a reduction may be made; provided, however, that no advance or reduction of existing schedules shall be made without the concurrence of the commission. Copies of all new or amended schedules shall be filed and posted in the stations or offices of public utilities as in the case of original schedules. The commission may prescribe such changes in the form in which the schedules are issued by any public utility as may be found to be expedient.

History: En. Sec. 11, Ch. 52, L. 1913; re-en. Sec. 3891, R. C. M. 1921.

## Commission Empowered to Fix Not Only Maximum but Also Minimum or Precise Rates

The public service commission, under its power to regulate a public utility (70-101 to 70-135), is clothed with authority not only to fix maximum but also minimum or precise rates. Great Northern Util. Co. Public Service Commission, 88 M 180, 293 P 294. See also, Great Northern Util. Co. v. Public Service Commission, 52 F 2d 802, 804.

## Judicial Review of Rates

Order fixing utility's minimum rate so high as to repel patronage and destroy utility's investment may be judicially annulled. (Const. amend. 14.) Great Northern Util. Co. v. Public Service Commission, 52 F 2d 802, 804.

Public service commission order fixing minimum gas rates held unreasonable, where utility sought to lower rates for purpose of self-preservation on account of joint occupancy with rival utility, of a field which could support only one. (Const. amend. 14.) Great Northern Util. Co. v. Public Service Commission, 52 F 2d 802, 804.

## Public Utility May Not Change Schedule of Rates without Concurrence of Commission

Under the rule that where one must secure leave from someone to entitle him to exercise a right, the irresistible implication is that a discretion is lodged in the other to refuse to grant it, if in his judgment it is improper or unwise to give the required consent, held, that the contention of a company engaged in furnishing gas to the inhabitants of a city, that after the filing of the initial schedule of rates with the public service commission, the company may change the schedule by the mere filing of a new one and giving the notice required by this section, and that the new schedule becomes effective without the act of concurrence on the part of the commission, may not be sustained. Great Northern Util. Co. v. Public Service Commission, 88 M 180, 293 P 294.

### References

State ex rel. Billings v. Billings Gas Co., 55 M 102, 107, 173 P 799; City of Billings v. Public Service Commission, 67 M 29, 37, 214 P 608.

## Collateral References

43 Am. Jur. 706, Public Utilities and Services, §§ 201-206.

70-114. (3892) Greater or less charges than those prescribed—rebates and privileges. It shall be unlawful for any public utility to charge, demand, collect, or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, or to demand, collect, or receive any rate, toll, or charge not specified in such schedules. The rates, tolls, and charges named therein shall be the lawful rates, tolls, and charges until the same are changed, as provided in this act. It shall likewise be unlawful for any public utility to grant any rebate, concession, or special privilege to any consumer or user, which, directly or indirectly, shall or may have the effect of changing the rates, tolls, charges, or payments, and any violation of the provisions of this section shall subject the violator to the penalty prescribed in section 70-110. This, however, does not have the effect of suspending, rescinding, invalidating, or in any way affecting existing contracts.

History: En. Sec. 12, Ch. 52, L. 1913; re-en. Sec. 3892, R. C. M. 1921.

## **Existing Contracts**

The concluding sentence of this section refers to the sentence immediately preceding, forbidding rebates, concessions etc., and was not intended to except from the operation of the act rate contracts made between cities and public utilities prior to its passage. State ex rel. Billings v. Billings Gas. Co., 55 M 102, 112, 173 P 799.

Since this section exempts from the operation of the act all "existing contracts" and does not exclude from the provisions of the exempting clause renewals or extensions of such contracts, the renewal or extension of the contract involved in this case was not unlawful. Helena Light & Ry. Co. v. Northern Pacific Ry. Co., 57 M 93, 186 P 702, overruled on another point in City of Billings v. Public Service Commission, 67 M 29, 39, 214 P 608.

The last sentence in this section: "This,

The last sentence in this section: "This, however, does not have the effect of suspending, rescinding, invalidating or in any way affecting existing contracts," refers to

the preceding sentence and not to the entire act, and means that, until changed by the commission, the rates, tolls and charges were to remain as fixed in existing contracts, even though such contracts granted rebates, concessions and special privileges, and that pending change by the commission the public utility was protected from prosecution; overruling the decision in Helena Light & Ry. Co. v. Northern Pacific Ry. Co., 57 M 93, in so far as it conflicts with the above holding. City of Billings v. Public Service Commission, 67 M 29, 214 P 608.

## References

Great Northern Util. Co. v. Public Service Commission, 88 M 180, 293 P 294.

## Collateral References

Discrimination between property within and that outside municipality or other governmental district as to public service or utility rates. 4 ALR 2d 595.

Discrimination by mutual association, nonprofit organization, or co-operative in furnishing utility services. 56 ALR 2d 413.

70-115. (3893) Classification of service. The commission may prescribe classifications of the service of all public utilities, and such classifications may take into account the quantity used, the time when used, and any other reasonable consideration. Each public utility is required to conform its schedule of rates, tolls, and charges to such classifications.

History: En. Sec. 13, Ch. 52, L. 1907; re-en. Sec. 3893, R. C. M. 1921.

Collateral References
Public Service Commissions 7.
C.J.S. Public Utilities § 41.

70-116. (3894) Rules as to inspections—public hearings. The commission shall have the power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits, and investigations, and to

adopt and publish reasonable and proper rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings of public utilities, and other parties before it. All hearings shall be open to the public.

History: En. Sec. 14, Ch. 52, L. 1913; re-en. Sec. 3894, R. C. M. 1921.

Collateral References
Public Service Commissions 8.
73 C.J.S. Public Utilities § 49.

70-117. (3895) Inquiry into and investigation of management of all public utilities. The commission shall have authority to inquire into the management of the business of all public utilities, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from any public utility all necessary information to enable the commission to perform its duties.

The commission or any commissioner, or any person or persons employed by the commission for that purpose, shall, upon demand, have the right to inspect the books, accounts, papers, records, and memoranda of any public utility, and to examine, under oath, any officer, agent, or employee of such public utility in relation to its business and affairs.

Any person, other than one of said commissioners, who shall make such demand, shall produce his authority to make such inspection.

The commission may require, by order or subpoena, to be served on any public utility, in the same manner that a summons is served in a civil action in the district court, the production, within this state, at such time and place as it may designate, of any books, accounts, papers, or records kept by such public utility in any office or place without the state of Montana, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission, or under its direction.

Any public utility failing or refusing to comply with any such order or subpoena, shall be subject to the liability named in section 70-110.

History: En. Sec. 15, Ch. 52, L. 1913; re-en. Sec. 3895, R. C. M. 1921.

Collateral References

Public Service Commissions 6, 16. 73 C.J.S. Public Utilities §§ 39, 54.

## References

Great Northern Util. Co. v. Public Service Commission, 88 M 180, 293 P 294.

70-117.1. Securities issued and liens created by public utilities subject to regulations by commission. The right of every public utility, as defined in section 70-103, furnishing electric or gas service in the state of Montana, to issue, assume or guarantee securities and to create liens on its property situated within the state of Montana, is hereby subjected to the regulation and supervision of the public service commission of Montana, as hereinafter in this act set forth. Such public utility when authorized by order of the commission and not otherwise, may issue stocks and stock certificates and may issue, assume or guarantee other securities payable at periods of more than twelve (12) months after the date thereof, for the following purposes:

For the acquisition of property; for the construction, completion, extension or improvement of its facilities; for the improvement or maintenance

of its service; for the discharge or lawful refunding of its obligations; for the reimbursement of moneys actually expended for said purposes from income or from other moneys; or for any other purpose approved by the commission.

History: En. Sec. 1, Ch. 74, L. 1961.

lic utilities through public service commission. 41 ALR 889.

Collateral References

Regulating issuance of securities by pub-

70-117.2. Petition for issuance of securities—approval by commission. Such public utility, shall, by written petition, filed with the commission and setting forth the pertinent facts involved, make application to the commission for an order authorizing the proposed issue, assumption or guarantee of securities, and the application of the proceeds therefrom for the purposes specified. The commission shall, after such hearing and upon such notice as the commission may prescribe, enter its written order approving the petition and authorizing the proposed securities transactions, unless the commission shall find: That such transactions are inconsistent with the public interest; or that the purpose or purposes thereof are not permitted by this act; or that the aggregate amount of the securities outstanding and proposed to be outstanding would exceed the fair value of the properties and business of the public utility.

History: En. Sec. 2, Ch. 74, L. 1961.

70-117.3. Short term obligations issuable without commission approval. Such public utility may issue notes or drafts maturing not more than one (1) year after the date of such issue, renewal or assumption of liability, and aggregating (together with all other then outstanding notes and drafts of a maturity of one (1) year or less on which such public utility is primarily or secondarily liable) not more than 5 per centum of the par value of the other securities of the public utility then outstanding, without application to or order of the commission. In the case of securities having no par value, the par value for the purpose of this subsection [section] shall be the fair market value as of the date of issuance of such notes or drafts.

History: En. Sec. 3, Ch. 74, L. 1961.

Compiler's Note

The bracketed word "section" was inserted by the compiler.

70-117.4. Applications to be disposed of promptly—continuance. All applications to the commission hereunder shall be disposed of promptly, and in any event within thirty (30) days after petition is filed with the commission unless, for good cause, it is necessary to continue consideration thereof for a longer period. Whenever such application is continued beyond said thirty (30) day period the commission shall enter its order effecting such continuance and stating fully therein the facts requiring continuance for a designated period of time.

History: En. Sec. 4, Ch. 74, L. 1961.

70-117.5. Unapproved securities void. Except as provided in section 70-117.3, all securities issued, assumed or guaranteed after the effective date

of this act without approval by the commission, as provided herein, shall be void.

History: En. Sec. 5, Ch. 74, L. 1961.

70-117.6. State not obligated. No provision of this act, or any act or deed done or performed in connection therewith shall be construed to obligate the state of Montana to pay or guarantee in any manner whatsoever any security authorized, issued, assumed or guaranteed under the provisions of this act.

History: En. Sec. 6, Ch. 74, L. 1961.

70-118. (3896) Employment of engineer and other help—salary of secretary. The commission is authorized to employ an engineer at a salary of four thousand dollars per annum, also examiners, experts, clerks, accountants, or other assistants as it may deem necessary, at such rates of compensation as it may determine upon; and it is further provided that the secretary of the public service commission shall receive an annual salary of six hundred dollars (\$600), such salary to be in addition to the salary now provided by law to be paid to the secretary of the board of railroad commissioners of the state of Montana.

History: En. Sec. 16, Ch. 52, L. 1913; amd. Sec. 1, Ch. 188, L. 1919; re-en. Sec. 3896, R. C. M. 1921.

rel. Olsen v. Public Service Commission, 131 M 104, 308 P 2d 633, 640.

### References

State ex rel. Barney v. Hawkins, 79 M 506, 524, 257 P 411, 53 ALR 583; State ex

## Collateral References

Public Service Commissions 4. 73 C.J.S. Public Utilities § 38.

70-119. (3897) Complaints against public utility—hearing. Upon a complaint made against any public utility by any mercantile, agricultural, or manufacturing society or club, or by any body politic or municipal organization, or association or associations, the same being interested, or by any person or persons, firm or firms, corporation or corporations, provided such persons, firms, or corporations are directly affected thereby that any of the rates, tolls, charges, or schedule, or any joint rate or rates, are in any way unreasonable or unjustly discriminatory, or that any regulations, measurements, practices, or act whatsoever affecting or relating to the production, transmission, or delivery or furnishing of heat, light, water, or power, or any service in connection therewith, or the conveyance of any telegraph or telephone message, or any service in connection therewith, is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate, the commission shall proceed, with or without notice, to make such investigation as it may deem necessary. But no order affecting such rates, tolls, charges, schedules, regulations, measurements, practice or act complained of, shall be entered without a formal hearing.

The commission shall give the public utility and the complainant or complainants at least ten days' notice of the time when and the place where such hearing will be held, at which hearing both the complainant and the public utility shall have the right to appear by counsel or otherwise, and be fully heard. Either party shall be entitled to an order by the commis-

sion for the appearance of witnesses or the production of books, papers, and documents containing material testimony. Witnesses appearing upon the order of the commission shall be entitled to the same fees and mileage as witnesses in civil cases in the courts of the state, and the same shall be paid out of the state treasury in the same manner as other claims against the state are paid; but no fees or mileage shall be allowed, unless the chairman of the commission shall certify to the correctness of the claim.

History: En. Sec. 17, Ch. 52, L. 1913; re-en. Sec. 3897, R. C. M. 1921.

v. Public Service Commission, 131 M 104, 308 P 2d 633, 639.

### References

State ex rel. Billings v. Billings Gas Co., 55 M 102, 107, 173 P 799; Great Northern Util. Co. v. Public Service Commission, 88 M 180, 209, 293 P 294; State ex rel. Olsen

## Collateral References

Public Service Commissions № 11 et seq. 73 C.J.S. Public Utilities § 47. 43 Am. Jur. 715, Public Utilities and Services, §§ 216-223.

70-120. (3898) Subpoena to witnesses. If any party ordered to appear before the commission as a witness shall fail to obey such order, the commission or any member, or the secretary thereof, may apply to the clerk of the nearest district court, for a subpoena commanding the attendance of said witness before the commission. It shall be the duty of such clerk to issue such subpoena, and of any peace officer to serve the same. Disobedience to such subpoena shall be deemed a contempt of court, and punished accordingly.

History: En. Sec. 18, Ch. 52, L. 1913; re-en. Sec. 3898, R. C. M. 1921.

## Col!ateral References

Public Service Commissions 11 et seq. 73 C.J.S. Public Utilities §§ 55, 62.

70-121. (3899) Fixing rates and making regulations on hearing—complaint by public utility. If, upon such hearing and due investigation, the rates, tolls, charges, schedules, or joint rates shall be found to be unjust, unreasonable, or unjustly discriminatory, or to be preferential or otherwise in violation of the provisions of this act, the commission shall have the power to fix and order substituted therefor, such rate or rates, tolls, charges, or schedules, as shall be just and reasonable. If it shall in like manner be found that any regulation, measurement, practice, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of the provisions of this act, or if it be found that the service is inadequate, or that any reasonable service cannot be obtained, the commission shall have power to substitute therefor such other regulations, measurements, practices, service, or acts, and make such order relating thereto, as may be just and reasonable.

When complaint is made of more than one rate, charge, or practice, the commission may, in its discretion, order separate hearings upon the several matters complained of, and at such times and places as it may prescribe. The commission may at any time, upon its own motion, investigate any of the rates, tolls, charges, rules, regulations, practices, and service, after a full hearing, as above provided, by order make such changes as may be just and reasonable, the same as if a formal complaint had been made.

Any public utility may make complaint as to any matter affecting its own product or service with like effect as though made by any mercantile, agricultural, or manufacturing society, body politic, or municipal organization, or person or persons. Notice of the hearing upon any such complaint shall be given to the persons interested in such manner as the commission may by rule prescribe.

History: En. Sec. 19, Ch. 52, L. 1913; re-en. Sec. 3899, R. C. M. 1921.

## Operation and Effect

Where the public service commission refuses to give its consent to a change of schedule of rates filed by a public utility, the utility may, under this section make complaint and thereupon a hearing must be held and an order made, the effect of

which must be just and reasonable. Great Northern Util. Co. v. Public Service Commission, 88 M 180, 203, 210 P 294.

## Collateral References

Public Service Commissions 7, 17. 73 C.J.S. Public Utilities §§ 41, 45, 107 et seq.

43 Am. Jur. 706, Public Utilities and Services, §§ 201-206.

70-122. (3900) Depositions of witnesses. The commission, or any party to any proceeding before it, may cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil actions.

History: En. Sec. 20, Ch. 52, L. 1913; re-en. Sec. 3900, R. C. M. 1921.

Collateral References
Depositions ← 5.
26A C.J.S. Depositions § 15.

70-123. (3901) Records of proceedings—copies. A full and complete record shall be kept of all proceedings before the commission or its representatives on any formal investigation, and all testimony shall be taken down by the stenographer appointed by the commission. Whenever any complaint is served upon the commission as hereinafter provided for the bringing of actions against the commission, before the action is reached for trial the commission shall cause a certified copy of all proceedings held and testimony taken upon such investigation to be filed with the clerk of the court in which the action is pending.

History: En. Sec. 21, Ch. 52, L. 1913; re-en. Sec. 3901, R. C. M. 1921.

## References

Great Northern Util. Co. v. Public Service Commission, 88 M 180, 293 P 294.

Collateral References

Public Service Commissions 31. 73 C.J.S. Public Utilities § 64.

70-124. (3902) Privilege of witnesses—perjury. No person shall be excused from testifying, or from producing books and papers, in any proceedings based upon or growing out of any alleged violation of the provisions of this act, on the ground of, or for the reason that, the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing, concerning which he may have testified or produced any documentary evidence; provided, that no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

History: En. Sec. 22, Ch. 52, L. 1913; re-en. Sec. 3902, R. C. M. 1921.

22 C.J.S. Criminal Law §§ 46(2), 46(3), 46(5); 98 C.J.S. Witnesses §§ 430 et seq., 436.

## Collateral References

Criminal Law 22; Witnesses 295, 297.

70-125. (3903) Refusal of public utility to fill blanks or produce evidence. Any officer, agent, or employee of any public utility who shall willfully fail or refuse to fill out and return any blanks as required by this act, or shall willfully fail or refuse to answer any questions therein propounded, or shall knowingly or willfully give a false answer to any such questions, or shall evade the answer to such questions, where the fact inquired of is within his knowledge, or who shall, upon proper demand, willfully fail or refuse to exhibit to any commission or any commissioners, or any person also authorized to examine the same, any book, paper, or account of such public utility which is in his possession or under his control, shall be subject to the penalty prescribed in section 70-110.

History: En. Sec. 23, Ch. 52, L. 1913; re-en. Sec. 3903, R. C. M. 1921.

Collateral References Corporations 323. 19 C.J.S. Corporations § 836.

70-126. (3904) Investigation of violation of law—duty of attorney general and prosecuting attorneys. The commission shall inquire into any neglect or violation of the laws of this state by any such public utility as hereinbefore defined, doing business therein, or by the officers, agents, or employees thereof, and shall have the power, and it shall be its duty, to enforce the provisions of this act, and report all violations thereof to the attorney general; upon the request of the commission it shall be the duty of the attorney general, or the prosecuting attorney of the proper, or any county, to aid in any investigations, prosecutions, hearing, or trial had under the provisions of this act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this act.

History: En. Sec. 24, Ch. 52, L. 1913; re-en. Sec. 3904, R. C. M. 1921.

70-127. (3905) Enforcement of rates or charges. All rates, fares, charges, classifications, and joint rates fixed by the commission shall be enforced, and shall be prima-facie lawful, from the date of the order until changed or modified by the commission, or in pursuance of the next section. All regulations, practices, and service, prescribed by the commission, shall be enforced and action shall be brought for that purpose, pursuant to the provisions of the next section, or until changed or modified by the commission itself upon satisfactory showing made.

History: En. Sec. 25, Ch. 52, L. 1913; lite. State v. Great Northern Util. Co., 86 re-en. Sec. 3905, R. C. M. 1921. M 442, 446, 284 P 772.

Mandamus Lies to Compel Obedience to Orders

In view of the provisions of this section and section 70-128, that the rates fixed by the public service commission for a public utility shall remain in full force and effect pending final determination by the courts of a proceeding calling them in question, and the provision of section 70-133, specifically authorizing mandamus proceedings to compel obedience to the orders issued, the fact that a proceeding questioning the legality of the rates is pending in court does not bar the commission from applying for a writ of mandate to compel obedience to its order pendente

## Orders Prima-facie Lawful

Under this act, rates fixed by the public service commission for a public utility furnishing hot-water heat in a city are prima-facie lawful, can be attacked in court on the sole ground that they are unlawful or unreasonable, and must be deemed reasonable and just until final determination by the courts, the burden of proof resting upon the party attacking the order of the commission. Billings Util. Co. v. Public Service Commission, 62 M 21, 29, 203 P 366.

The orders of the public service commission are by this section made primafacie lawful until changed or modified.

Great Northern Util. Co. v. Public Service Commission, 88 M 180, 202, 293 P 294.

## Power of State

The establishment of a rate is a legislative, and not a judicial, act, and the power of the courts is circumscribed and restrained so far as interference with determinations reached within the scope of legislative authority is concerned. Billings Util. Co. v. Public Service Commission, 62

M 21, 29, 203 P 366.

A municipality and a party to whom it grants a franchise to construct and operate a public heating plant enter into the contract with the knowledge that while the municipality may contract respecting rates, the state may at any time thereafter in furtherance of the public welfare exercise its inherent power of rate regulation and control. City of Billings v. Public Service Commission, 67 M 29, 35, 214 P 608, distinguished in 99 M 465, 480, 44 P 2d 735.

## Power to Change Rates

The act creating the public service commission confers upon the commission the power, within the lawful exercise of its authority, to change the rates, tolls and charges in public utility contracts, even though they existed prior to the passage of the act. City of Billings v.

Public Service Commission, 67 M 29, 35, 214 P 608.

The legislature in enacting the Public Service Commission Act intended not only to empower the commission to regulate charges or fix rates, but also to see to it that reasonable service is rendered by the utility and that its equipment is reasonably adequate. Great Northern Util. Co. v. Public Service Commission, 88 M 180, 202, 293 P 294.

The public service commission, under its power to regulate a public utility (70-101 to 70-135), is clothed with authority not only to fix maximum, but also minimum or precise rates. Great Northern Util. Co. v. Public Service Commission, 88 M 180,

293 P 294.

### References

Doney v. Northern Pacific Ry. Co., 60 M 209, 237, 199 P 432; Mountain States Telephone & Telegraph Co. v. Public Service Commission, 135 M 170, 338 P 2d 1044, 1049; Montana Power Co. v. Public Service Commission, 12 F Supp 946.

### Collateral References

Public Service Commissions 7, 21. 73 C.J.S. Public Utilities §§ 41, 67. 43 Am. Jur. 719, Public Utilities and Services, § 223.

## 70-128. (3906) Action to set aside rates or charges fixed by commission.

- (1) Any party in interest being dissatisfied with an order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices, or services, may within ninety days commence an action in the district court of the proper county against the commission and other interested parties as defendants, to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates, fixed in such order is unlawful or unreasonable, or that any such regulation, practice, or service, fixed in such order, is unlawful or unreasonable. The commission and other parties defendant shall file their answer to said complaint within thirty days after the service thereof, whereupon such action shall be at issue and stand ready for trial upon twenty days' notice to either party.
- (2) All actions brought under this section shall have precedence over any civil cause of a different nature pending in such court, and the court shall always be deemed open for the trial thereof, and the same shall be tried and determined as other civil actions; any party to such action may introduce evidence in addition to the transcript of the evidence offered to such commission. Any party in interest being dissatisfied with the order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing or prescribing any rule, regulation, practice, or service, may apply to the district court having jurisdiction, for, and upon proper showing there shall be issued by such court, an injunction, staying and suspending the operation of the order of the commission pend-

ing the final determination of the reasonableness and lawfulness of said order in the courts. All orders of the commission shall become operative within twenty days after the filing of the order by the commission subject to the right of stay and injunction as hereinbefore provided. As a condition to the granting of such injunction, the court shall require of the party seeking such injunction an undertaking entered into on the part of the plaintiff, supported by responsible corporate surety, in such reasonable sum as the court shall direct, to the effect that the plaintiff will pay all damages which the opposite party may sustain by reason of the delay or prevention of the order of the commission becoming effective if said order is sustained in the final determination, or in proceedings involving rates the court may in the alternative require the difference between the existing rate and the commission ordered rate to be impounded under the direction of the court, pending the final determination of the action.

- (3) If, upon the trial of such action, evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for fifteen days from the date of such transmission. Upon receipt of such evidence, the commission shall consider the same, and may modify, amend, or rescind its order relating to such rate or rates, fares, charges, classifications, joint rate or rates, regulation, practice, or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.
- (4) If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify, or amend the same, such altered, modified, or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon, as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.
- (5) Either party to said action, within sixty days after service of a copy of the order or judgment of the court, may appeal or take the case up on error as in other civil actions. Where an appeal is taken to the supreme court of Montana, the cause shall, on the return of the papers to the higher court, be immediately placed on the calendar of the then pending term, and shall be assigned and brought to a hearing in the same manner as other causes on the calendar.
- (6) In all actions under this act, the burden of proof shall be upon the party attacking or resisting the order of the commission to show that the order is unlawful or unreasonable, as the case may be.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R. C. M. 1921; amd. Sec. 1, Ch. 56, L. 1937.

## Cross-Reference

Application of Montana Rules of Civil Procedure to this section, sec. 93-2711-7.

## Burden of Proof

In order to overcome the statutory presumption that all rates established by the commission are prima-facie lawful, the attacking party must present clear and convincing proof showing manifest error. Mountain States Telephone & Telegraph Co. v. Public Service Commission, 135 M 170, 338 P 2d 1044.

Where the company's proof showed only a conflict of fact between the company and the commission on the rate base and rate of return and did not otherwise show wherein the rates were confiscatory, it failed to carry the burden of proof and an injunction was properly denied. Mountain States Telephone & Telegraph Co. v. Public Service Commission, 135 M 170, 338 P 2d 1044.

### Demurrer

That part of this section which requires the commission and other parties defendant to file their answer to the complaint within thirty days does not preclude the filing of a demurrer. There is no reason why the commission may not properly demur upon grounds which raise only questions of law that are preliminary to a consideration of the case on the merits. As to the contention that this results in the delay of the trial, it is sufficient to say that it is proper for the court to extend the time for answering for a reasonable time after disposition of the demurrer. State ex rel. Olsen v. Public Service Commission, 129 M 106, 283 P 2d 594, 596.

## Federal Holding on Inhibition against Stay or Injunction Prior to Final Determination

On appeals from decrees of the U. S. district court which dismissed, for lack of jurisdiction, two suits to set aside orders of the public service commission requiring appellant to reduce its charges for electricity in Baker and Forsyth, held (in reversing the decisions), that the court could not conclude that a "plain, speedy and efficient remedy" exists in the state courts under the inhibition of this section against stay or injunction prior to final determination to apply the so-called Johnson Act (48 Statutes at Large, ch. 283, p. 775) amending Par. one, Sec. 24, Judicial Code (U. S. C., Tit. 28, Sec. 41). Mountain States Power Co. v. Public Service Commission, 299 U S 167, 81 L Ed 99, 57 S Ct 168.

Federal court did not have jurisdiction of suit to enjoin rate order issued by state public service commission on ground that statute denied supersedeas or stay in state court, where United States supreme court had held a similar statute of state void as denying due process, and another statute would permit state court to grant stay on proper showing (see 93-4204 et seq.). Montana Power Co. v. Public Service Commission, 12 F Supp 946, 952.

## Grounds for Injunction

Bare assertions that the commission's findings are unreasonable, unlawful and confiscatory will not, without more, be

sufficient to invoke the court's jurisdiction for an injunction. Mountain States Telephone & Telegraph Co. v. Public Service Commission, 135 M 170, 338 P 2d 1044.

## "In the District Court of the Proper County"

In construing section 93-2902, declaring that a cause of action against a public officer for an act done by him by virtue of his office must be tried in the county where the cause of action, or some part thereof, arose, held, that for the purpose of venue, the place of trial of a proceeding questioning the reasonableness of rates fixed by the public service commission, under this section, was in the counties in which the order reducing rates was to be put into operation, its enforcement, and not where the mere making of the order occurred in the commission's office at the state capitol. Montana-Dakota Util. Co. v. Public Service Commission, 111 M 78, 80, 107 P 2d 533.

## Review on Appeal

On review, if the commission's order and findings therein are supported by evidence and credible proof, the courts will sustain it. State ex rel. Olsen v. Public Service Commission, 131 M 272, 309 P 2d 1035, 1040.

## Transmission of Evidence from Court to Commission

Under this section, in an action to enjoin the commission from enforcing an order reducing electric power rates, where the court admits evidence of changes in the utility's property since the date of the commission's order and time of trial, it must, before rendering judgment, furnish the commission with the transcript of the evidence, and it is thereupon the duty of the commission to consider such evidence. Tobacco River Power Co. v. Public Service Commission, 109 M 521, 530, 98 P 2d 886.

### References

Doney v. Northern Pacific Ry. Co., 60 M 209, 237, 199 P 432; Billings Util. Co. v. Public Service Commission, 62 M 21, 29, 203 P 366; City of Billings v. Public Service Commission, 67 M 29, 35, 214 P 608; State v. Great Northern Util. Co., 86 M 442, 284 P 772; Great Northern Util. Co. v. Public Service Commission, 88 M 180, 202, 293 P 294; State ex rel. Public Service Commission v. District Court, 103 M 563, 565, 63 P 2d 1032; East Ohio Gas Co. v. City of Cleveland, 23 F Supp 965, 968.

## Collateral References

Public Service Commissions ≥ 25.
73 C.J.S. Public Utilities § 66.
43 Am. Jur. 720, Public Utilities and
Services, §§ 224 et seq.

70-129. (3907) Investigation of accidents—report as to accident. The commission or some member thereof, or some person deputed by it, shall investigate and make inquiry into every accident occurring in the operation of any public utility in this state, resulting in death, or injury to any person of such gravity as to require the attention of a physician or surgeon. The testimony taken at such hearing shall be transcribed and filed in the office of the commission.

It is hereby made the duty of every public utility operating within this state, promptly upon the occurrence of any accident, such as is mentioned above, to report by telegraph, followed by written report, the same to the commission, in which report shall be stated the time and place of accident, the names of persons killed or injured, and in concise form the nature and cause of such accident. The commission shall prescribe forms for the purpose of making such written reports. Reports of accidents as referred to in this section shall be included in the commission's annual report to the governor.

History: En. Sec. 27, Ch. 52, L. 1913; re-en. Sec. 3907, R. C. M. 1921.

70-130. (3908) Public utility violating laws or failing to comply with order. If any public utility shall violate any provision of this act, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it, or upon failure of any public utility to place in operation any rate or joint rate or do any act herein prohibited, for which a penalty has not been provided, or shall fail, neglect, or refuse to obey any lawful requirement or order made by the commission or any court, for every such violation, failure, or refusal, such public utility shall be subject to the penalty prescribed by section 70-110.

History: En. Sec. 28, Ch. 52, L. 1913; re-en. Sec. 3908, R. C. M. 1921.

Collateral References

Corporations 396 and other specific topics.

19 C.J.S. Corporations § 992.

70-131. (3909) Verification of reports and statements—perjury. Every annual report, record, or statement required by this act to be made to the commission shall be sworn to by the proper officer, agent, or person in charge of such public utility. Any intentionally false oath as to the correctness of such report, record or statement shall be deemed perjury, and the person making such false oath shall, upon conviction, be punished as in the case of other perjuries.

History: En. Sec. 29, Ch. 52, L. 1913; re-en. Sec. 3909, R. C. M. 1921.

70-132. (3910) Recovery of forfeitures and penalties. Any forfeiture or penalty herein provided shall be recovered and suit thereon shall be brought in the name of the state of Montana in the district court of any county having jurisdiction of the defendant. The attorney general of Montana shall be the counsel in any proceeding, investigation, hearing, or trial, prosecuted or defended by the commission, as also shall any prosecuting attorney selected by said commission, or other special counsel furnished said commission in any county where such action is pending.

History: En. Sec. 30, Ch. 52, L. 1913; re-en. Sec. 3910, R. C. M. 1921.

### Collateral References

Corporations 396 and other specific topics.

19 C.J.S. Corporations § 992.

70-133. (3911) Mandamus, injunction and other remedies. In addition to all the other remedies provided by this act for the prevention and punishment of any and all violations of the provisions thereof and all orders of the commission, the commission may compel compliance with the provisions of this act and of the orders of the commission by proceedings in mandamus, injunction, or by other civil remedies.

History: En. Sec. 31, Ch. 52, L. 1913; re-en. Sec. 3911, R. C. M. 1921.

## Operation and Effect

In view of the provisions of sections 70-127 and 70-128, that the rates fixed by the public service commission for a public utility shall remain in full force and effect pending final determination by the court of a proceeding calling them in question, and the provision of this section specifically authorizing mandamus proceedings to compel obedience to the orders issued, the fact that a proceeding questioning the legality of the rates is pending in court does not bar the commission from

applying for a writ of mandate to compel obedience to its order pendente lite. State v. Great Northern Util. Co., 86 M 442, 446, 284 P 772.

### References

State ex rel. Billings v. Billings Gas Co., 55 M 102, 108, 173 P 799; Montana Power Co. v. Public Service Commission, 12 F Supp 946.

## Collateral References

Injunction 70; Mandamus 136. 43 C.J.S. Injunctions § 103; 55 C.J.S. Mandamus § 228.

70-134. (3912) Traveling expenses of commission. The commission and secretary, and such clerks and experts as may be employed, shall be entitled to receive from the state their necessary expenses while traveling on the business of the commission, including the cost of lodging and subsistence. Such expenditure shall be sworn to by the person who incurred the expenses, and be approved by the chairman of the commission.

History: En. Sec. 32, Ch. 52, L. 1913; re-en. Sec. 3912, R. C. M. 1921.

## Collateral References

Public Service Commissions 5. 73 C.J.S. Public Utilities § 36.

70-135. (3913) Effect of invalidity of part of law. Each section of this act and every part of each section are hereby declared to be independent sections and parts of sections, and the holding of any section or part thereof to be void or inoperative for any cause shall not be deemed to affect any other section thereof.

History: En. Sec. 33, Ch. 52, L. 1913; re-en. Sec. 3913, R. C. M. 1921.

## Collateral References

Statutes \$64(2). 82 C.J.S. Statutes § 106.

## CHAPTER 2

MONTANA STATE BOARD OF FOOD DISTRIBUTORS EX OFFICIO MONTANA TRADE COMMISSION—REGULATION OF PUBLIC MILLS

Section 70-201. Creation of commission.

70-202. Duties of commission.

70-203. Seal—secretary of commission.

70-204. "Public mills" defined.

70-205. Wheat and other grains to be milled on basis of toll fixed by com-

70-206. Term "public mills" does not include privately owned mills.

70-207. "Privately owned mill or mills" defined.

70-208. "Corporation" defined.

70-209. Commission may prescribe rules of procedure—want of judicial power. 70-210. Public mills must furnish adequate service and facilities—reasonable-

ness of tolls.

70-211. Mill may charge a reasonable profit.

70-212. Valuation of plants.

70-213. Uniform accounts to be rendered commission.

70-214. "Documentary evidence" defined.

70-215. Copies of documentary evidence—subpoena of witnesses—subpoena duces tecum.

70-216. Depositions.

70-217. Owner or occupant accountable for grain.

70-218. Penalty

70-219. Right of entry upon premises.

70-220. Schedule of rates, tolls and charges.

70-221. Rules and regulations for investigations, etc.—rules of procedure.

70-222. Right to inquire into management of business.

70-223. Power to compel production of documentary evidence.

70-224. Jurisdiction of district court to enforce obedience to process.

70-225. Employment of accountant and other help.

70-226. Investigation of complaints.

70-227. Notice of hearing-rights of parties-witness fees and mileage.

70-228. Power of commission in disposing of complaints.

70-229. Complaints by persons or corporations concerning their own products—notice of hearing—record of proceedings.

70-230. Proceedings for the enforcement of law. 70-231. Recovery of penalties and forfeitures.

70-232. Penalty for violation of law or failure to comply with order.

70-233. Traveling expenses of commission.

70-201. (3914) Creation of commission. An administrative and supervisory commission is hereby created and established, to be known as the Montana trade commission (hereinafter referred to as "the commission"), and the Montana state board of food distributors shall be, ex officio, and said board is hereby made the Montana trade commission hereby established. The Montana state board of food distributors, ex officio Montana trade commission, hereby established, shall have and possess all of the powers, and shall discharge, perform and carry out all of the duties prescribed by sections 70-202 to 70-233, and shall have such further powers and discharge such other duties as may be assigned to it by law. The Montana state board of food distributors proper shall continue under that head to possess such powers and discharge such duties as are prescribed by law.

History: En. Sec. 1, Ch. 223, L. 1919; re-en. Sec. 3914, R. C. M. 1921; amd. Sec. 1, Ch. 123, L. 1943.

state board of food distributors with respect to distribution of foodstuffs in Title 27, Food and Drugs, Ch. 3.

NOTE.—The duties of the Montana trade commission with respect to Unfair Trade Practices will be found in Title 51, Monopolies, Ch. 1; and of the Montana

Collateral References States \$\infty 45. 81 C.J.S. States § 66.

70-202. (3915) Duties of commission. It shall be the duty of the commission hereby created to fix reasonable rules, charges, rates, tolls, maximum profits, and to supervise and regulate the operations of public mills within the state of Montana, such supervision, control and regulation to be in conformity with this act.

History: En. Sec. 2, Ch. 223, L. 1919; re-en. Sec. 3915, R. C. M. 1921.

Collateral References
Manufactures \$\infty 2.
55 C.J.S. Manufactures \§ 5.

70-203. (3916) Seal—secretary of commission. The commission shall provide itself with a seal which shall be judicially noticed, and by which its official acts shall be authenticated in all cases where a seal is required; and in the name of the commission, as above set forth, it may sue and be sued in the courts of the state and of the United States. The secretary of the railroad commission of Montana shall act as secretary of the commission hereby created, but the business of the Montana trade commission shall be kept entirely separate from that of the board of railroad commissioners.

History: En. Sec. 3, Ch. 223, L. 1919; re-en. Sec. 3916, R. C. M. 1921.

commission has not acted as secretary of the Montana trade commission.

NOTE.—Since the 1943 amendment of section 70-201 the secretary of the railroad

Collateral References States \$\infty\$67. 81 C.J.S. States \\$66.

70-204. (3917) "Public mills" defined. The term "public mills," within the meaning of this act, shall be construed to mean and embrace all persons, copartnerships, associations, or corporations, their lessees, trustees, or receivers appointed by any court whatsoever, who now or may hereafter own, operate, manage, or control any elevator, mill, factory, or plant or equipment, or any part of a mill or equipment, within the state of Montana, whether operated by steam, electricity, water power, or any other motive power, or any elevator used in connection therewith, or any kind of equipment used or necessary in the business of milling, manufacturing, or producing flour, bran, mill-feed, or products or commodities of any kind, from wheat, oats, or other grain, and who also is engaged in the business of purchase of wheat and other grain in the open market, and manufacturing same into flour, feed, or other grain products, and selling the same in open markets, and manufacturing flour, feed, or other grain products for farmers and other customers for toll or pay. And the commission is hereby invested with full power of supervision, regulation, and control of such public mills, subject to the provisions of this act.

History: En. Sec. 4, Ch. 223, L. 1919; re-en. Sec. 3917, R. C. M. 1921.

70-205. (3918) Wheat and other grains to be milled on basis of toll fixed by commission. Every such public mill shall grind and bolt into flour and its equivalent mill products wheat of milling quality when offered by the owner thereof, on a basis of toll to be fixed by the commission; and every such public mill shall grind and chop grains other than wheat when offered by the owner thereof, on a basis of toll to be fixed by the commission; provided, that such mill shall be permitted to return to the person offering such grain for grinding and bolting, or for grinding and chopping, the equivalent value of such grain in flour or other mill products, less the toll in kind allowed to be taken by the commission.

History: En. Sec. 5, Ch. 223, L. 1919; re-en. Sec. 3918, R. C. M. 1921.

70-206. (3919) Term "public mills" does not include privately owned mills. The term "public mills," as used in this act, shall not be construed to mean and embrace privately owned mills.

History: En. Sec. 6, Ch. 223, L. 1919; re-en. Sec. 3919, R. C. M. 1921.

Collateral References
Manufactures 2.
55 C.J.S. Manufactures § 5.

70-207. (3920) "Privately owned mill or mills" defined. The term "privately owned mill or mills," as used in this act, shall be construed to mean any such mill, owned, operated, or used by any person, persons, corporation, or copartnership, for the purpose of grinding or manufacturing his or its grain for his or its own use or consumption.

History: En. Sec. 7, Ch. 223, L. 1919; re-en. Sec. 3920, R. C. M. 1921.

70-208. (3921) "Corporation" defined. The term "corporation," as used in this act, shall be construed to mean and embrace any company or association, incorporated or unincorporated, which is engaged in this state in the business of milling, manufacturing, and producing flour, bran, mill-feed, or products or commodities of any kind, from wheat, oats, or other grain.

History: En. Sec. 8, Ch. 223, L. 1919; re-en. Sec. 3921, R. C. M. 1921.

70-209. (3922) Commission may prescribe rules of procedure—want of judicial power. In addition to the modes of procedure hereinafter prescribed in particular cases and classes of cases, said commission shall have power to prescribe rules of procedure, and to do all things necessary and convenient in the exercise of the powers by this act conferred upon the commission; provided, that nothing in this act shall be construed as vesting judicial powers on said commission, or as denying to any person, firm, association, or corporation the right to test, in court of competent jurisdiction, the legality or reasonableness of any fixed rule or order, made by the commission in the exercise of its duties or powers.

History: En. Sec. 9, Ch. 223, L. 1919; re-en. Sec. 3922, R. C. M. 1921.

Collateral References
Manufactures©=2.
55 C.J.S. Manufactures § 5.

70-210. (3923) Public mills must furnish adequate service and facilities—reasonableness of tolls. Every such "public mill" which comes within the provisions of this act is required to furnish reasonably adequate service and facilities. The charge of toll made by any such public mill for the grinding, chopping, bolting, rolling, preparation, or manufacture of flour, feed, bran, rolled oats, cereals, breakfast foods, or other mill stuffs or grain products of every kind and nature, or for any service to be rendered to or in connection with any such mill, shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.

History: En. Sec. 10, Ch. 223, L. 1919; re-en. Sec. 3923, R. C. M. 1921.

70-211. (3924) Mill may charge a reasonable profit. Every such mill coming within the provisions of this act, the selling or disposing of any of its flour, feed, or other mill stuffs or grain products, shall charge a reasonable profit in addition to the actual cost of its products in the sale thereof to other persons, corporations, or associations.

History: En. Sec. 11, Ch. 223, L. 1919; re-en. Sec. 3924, R. C. M. 1921.

70-212. (3925) Valuation of plants. The commission may, in its discretion, investigate and ascertain the value of the property of every such "public mill" coming within the provisions of this act, actually used and useful in the milling, manufacture, sale, or production of such grain or grain products. In making such investigation the commission may avail itself of all information contained in the assessment rolls of various counties, and the public records of the various branches of the state government, or any other information obtainable, and the commission may at any time of its own initiative make a revaluation of such property.

History: En. Sec. 12, Ch. 223, L. 1919; re-en. Sec. 3925, R. C. M. 1921.

70-213. (3926) Uniform accounts to be rendered commission. Every public mill, coming within the provisions of this act shall keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted.

History: En. Sec. 13, Ch. 223, L. 1919; re-en. Sec. 3926, R. C. M. 1921.

70-214. (3927) "Documentary evidence" defined. The term "documentary evidence," as used in this act, shall be construed to mean all documents, papers, and correspondence in existence at and after the passage of this act.

History: En. Sec. 14, Ch. 223, L. 1919; re-en. Sec. 3927, R. C. M. 1921.

70-215. (3928) Copies of documentary evidence—subpoena of witnesses—subpoena duces tecum. For the purpose of this act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person or corporation, coming under the provisions of this act, being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses, and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

History: En. Sec. 15, Ch. 223, L. 1919; re-en. Sec. 3928, R. C. M. 1921.

70-216. (3929) Depositions. The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission, and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

History: En. Sec. 16, Ch. 223, L. 1919; re-en. Sec. 3929, R. C. M. 1921.

Collateral References
Depositions 5.
26A C.J.S. Depositions § 15.

70-217. (3930) Owner or occupant accountable for grain. The owner or occupant of every mill is accountable for the safekeeping of all grain received in the mill for the purpose of being ground therein, and must deliver the same when ground, or ground and bolted, with the bags or sacks which were delivered in the mill with the grain, to the owner when called for. The bags or sacks must be distinctly marked with the initials or surname of the owner. But the owner or occupant of any mill must not be charged with or made accountable for the loss of any grain, bags, or sacks which may happen by robbery, fire, or other accident, without the fault or neglect of such owner or occupant, or his employee.

History: En. Sec. 2, p. 72, L. 1879; re-en. Sec. 3271, Pol. C. 1895; re-en. Sec. re-en. Sec. 1203, 5th Div. Rev. Stat. 1879; 2093, Rev. C. 1907; re-en. Sec. 3930, R. C. re-en. Sec. 2009, 5th Div. Comp. Stat. 1887; M. 1921.

70-218. (3931) Penalty. If the owner or occupant, or his employee, takes a greater proportionate quantity of toll than authorized, he is guilty of larceny, and is punishable as provided in the Penal Code.

History: En. Sec. 3272, Pol. C. 1895; re-en. Sec. 2094, Rev. C. 1907; re-en. Sec. 3931, R. C. M. 1921.

70-219. (3932) Right of entry upon premises. The commission, its agents, experts, or examiners, shall have the right, authority, and power to enter upon any premises occupied by any public mill coming within the provisions of this act, for the purpose of making the examination, investigation, and tests, from time to time, as the commission may deem necessary, and to set up and use on such premises any appurtenances and appliances, and occupy reasonable space therefor.

History: En. Sec. 17, Ch. 223, L. 1919; re-en. Sec. 3932, R. C. M. 1921.

70-220. (3933) Schedule of rates, tolls and charges. Every public mill coming within the provisions of this act shall file with the commission, within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls, charges, and prices which are established, and which are in force at the time, for any service performed, or maximum charges or prices for its products.

History: En. Sec. 18, Ch. 223, L. 1919; re-en. Sec. 3933, R. C. M. 1921.

70-221. (3934) Rules and regulations for investigations, etc.—rules of procedure. The commission shall have the power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits, and investigations, and to adopt and publish reasonable and proper rules to govern its proceedings and regulate the mode and manner of all investigations and hearings of such public mills coming within the provisions of this act. All hearings shall be open to the public.

History: En. Sec. 19, Ch. 223, L. 1919; re-en. Sec. 3934, R. C. M. 1921.

70-222. (3935) Right to inquire into management of business. The commission shall have power and authority to inquire into the management of the business of all public mills coming within the provisions of this act,

and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from any such industry all necessary information to enable the commission to perform its duties.

History: En. Sec. 20, Ch. 223, L. 1919; re-en. Sec. 3935, R. C. M. 1921.

70-223. (3936) Power to compel production of documentary evidence. The commission may require, by order or subpoena, to be served on any person or corporation coming within the provisions of this act, in the same manner that a summons is served in a civil action in the district court, the production, within this state, at such time and place as it may designate, of any documentary evidence, books, accounts, papers, or records kept by such person or corporation in any office or place within or without the state of Montana, or verified or certified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission or under its direction.

History: En. Sec. 21, Ch. 223, L. 1919; re-en. Sec. 3936, R. C. M. 1921.

70-224. (3937) Jurisdiction of district court to enforce obedience to process. Any district court of the state of Montana, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

History: En. Sec. 22, Ch. 223, L. 1919; re-en. Sec. 3937, R. C. M. 1921.

70-225. (3938) Employment of accountant and other help. The commission is authorized to employ an accountant, at a salary of not to exceed three thousand dollars per annum, also examiners, experts, clerks, and accountants or other assistants, as it may be deemed necessary, at such rates of compensation as may be determined upon.

History: En. Sec. 23, Ch. 223, L. 1919; re-en. Sec. 3938, R. C. M. 1921.

Collateral References States©=53. 81 C.J.S. States § 70.

References

State ex rel. Barney v. Hawkins, 79 M 506, 257 P 411.

70-226. (3939) Investigation of complaints. Upon a complaint made against any such person or corporation by any mercantile, labor, or agricultural organization, society, or club, or by any person or persons, firm or firms, corporation or corporations, who are directly affected thereby, that any of the rates, tolls, charges, or schedule of maximum profits are in any way unreasonable or unjustly discriminatory, or that any regulations, measures, practices, or acts whatsoever, affecting or relating to the production, manufacture, or preparation or sale of such mill stuffs or grain products, are in any respect unreasonable or insufficient, or that any service in connection therewith is inadequate, the commission shall proceed, with or

without notice, to make such investigations as it may deem necessary and proper.

History: En. Sec. 24, Ch. 223, L. 1919; re-en. Sec. 3939, R. C. M. 1921.

70-227. (3940) Notice of hearing—rights of parties—witness fees and mileage. The commission shall give such persons or corporations and the complainant or complainants at least ten days' notice of the time when and the place where such hearing will be held, at which hearing both the complainant and such persons or corporations shall have the right to appear by counsel or otherwise, and be fully heard. Either party shall be entitled to an order by the commission for the appearance of witnesses or the production of documentary evidence, books, papers, and documents containing material testimony. Witnesses appearing upon the order of the commission shall be entitled to the same fees and mileage as witnesses in civil cases in the district courts of the state, and the same shall be paid out of the state treasury in the same manner as other claims against the state are paid, but no fees for mileage shall be allowed, unless the chairman of the commission shall certify to the correctness of the claim.

History: En. Sec. 25, Ch. 223, L. 1919; re-en. Sec. 3940, R. C. M. 1921.

70-228. (3941) Power of commission in disposing of complaints. If, upon such hearing and due investigations, the rates, tolls, charges, or profits shall be found to be unjust, unreasonable, or unjustly discriminatory, or to be preferential, or otherwise in violation of the provisions of this act, the commission shall have the power to fix an order substituting therefor such maximum rate or rates, tolls, charges, or schedule of profits as shall be just and reasonable.

History: En. Sec. 26, Ch. 223, L. 1919; re-en. Sec. 3941, R. C. M. 1921.

70-229. (3942) Complaints by persons or corporations concerning their own products—notice of hearing—record of proceedings. Any person or corporation coming within the provisions of this act may make complaint as to any matter affecting its own product or service, with like effect as though made by any mercantile, agricultural, or labor organization, and the person or persons affected thereby. Notice of the hearing upon any such complaint shall be given to the persons interested in such matter as the commission may by rule prescribe. A full and complete record shall be kept of all proceedings before the commission, or its representatives, on any formal investigation, and all testimony shall be taken down by a stenographer appointed by the commission.

History: En. Sec. 27, Ch. 223, L. 1919; re-en. Sec. 3942, R. C. M. 1921.

70-230. (3943) Proceedings for the enforcement of law. The commission shall inquire into any neglect or violation of the laws of this state, by any such persons or corporation coming within the provisions of this act, and doing business in the state of Montana, or by the officers, agents, or employees thereof, shall have the power and it shall be its duty to enforce the provisions of this act and report all violations thereof to the

attorney general. Upon the request of the commission, it shall be the duty of the attorney general, or the prosecuting attorney of the proper county, to aid in any investigations, prosecutions, hearing, or trial had under the provisions of this act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this act.

History: En. Sec. 28, Ch. 223, L. 1919; re-en. Sec. 3943, R. C. M. 1921.

70-231. (3944) Recovery of penalties and forfeitures. Any forfeiture or penalty herein provided shall be recovered and suit thereon shall be brought in the name of the state of Montana in the district court of any county having jurisdiction of the defendant. The attorney general of the state of Montana shall be the counsel in any proceeding, investigation, hearing, or trial, prosecuted or defended by the commission, as also shall any county attorney selected by said commission in any county where such action is pending.

History: En. Sec. 29, Ch. 223, L. 1919; re-en. Sec. 3944, R. C. M. 1921.

70-232. (3945) Penalty for violation of law or failure to comply with order. If any person or corporation coming within the provisions of this act shall violate any provisions of this act, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it, or upon failure of any such person or corporation to place in operation any rate, toll, or profit, or do any act herein prohibited, or shall fail, neglect, or refuse to obey any lawful requirement or order made by the commission or any court, for every such violation, failure, or refusal, such person or corporation shall be subject to a fine of not less than one hundred dollars nor more than five thousand dollars.

History: En. Sec. 30, Ch. 223, L. 1919; re-en. Sec. 3945, R. C. M. 1921.

70-233. (3946) Traveling expenses of commission. The commission and secretary and such clerks and experts as may be employed shall be entitled to receive from the state their necessary expenses while traveling on the business of the commission, including the cost of lodging and subsistence. Such expenditure shall be sworn to by the person who incurred the expenses, and be approved by the chairman of the commission.

History: En. Sec. 31, Ch. 223, L. 1919; re-en. Sec. 3946, R. C. M. 1921.

## CHAPTER 3

TELEGRAPH, TELEPHONE AND ELECTRIC LIGHT AND POWER LINES

Section 70-301. Rights of way for pole lines along streets, roads and highways.

70-302. Construction and connection.

70-303. Consolidation of competing lines forbidden.

70-301. (6645) Rights of way for pole lines along streets, roads and highways. A telegraph, telephone, electric light, or electric power line, corporation, or public body or any other person owning or operating such,

is hereby authorized to install its respective plants and appliances necessary for service, and to supply and distribute electricity for lighting, heating, power, and other purposes, and to that end to construct such telegraph, telephone, electric light or electric power line or power lines, from point to point, along and upon any of the public roads, streets, and highways in the state of Montana, by the erection of necessary fixtures, including posts, piers, and abutments necessary for the wires. But the same shall be so constructed as not to incommode or endanger the public in the use of said roads, streets, or highways, and nothing herein shall be so construed as to restrict the powers of city or town councils.

History: Ap. p. Sec. 1000, Civ. C. 1895; amd. Sec. 1, Ch. 55, L. 1905; amd. Sec. 1, Ch. 192, L. 1907; re-en. Sec. 4400, Rev. C. 1907; re-en. Sec. 6645, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1945.

## Cross-References

Bribing telegraph operators, sec. 94-35-221.

Disclosing or altering telegram, penalty, secs. 94-3321 to 94-3323.

Duty to deliver message, sec. 8-418.

Employee using information, penalty, sec. 94-35-219.

Forgery of message, sec. 94-2005.

Malicious injury to telegraphs or telephones, sec. 94-3203.

Neglect or postponement of delivery, sec. 94-35-218.

Order of delivery, sec. 8-820.

Secretly learning contents of message, penalty, sec. 94-35-220.

Taxation of telegraph companies, secs. 84-901 to 84-907.

Telegraph companies, license tax, secs. 84-2501 to 84-2508.

Telephone companies, license tax, secs. 84-2601 to 84-2608.

### Operation and Effect

A telephone company is not a trespasser on a highway nor negligent per se in maintaining a guy wire on a portion of it not intended for travel, this section giving to such company the right to construct its lines along the highways, provided the traveling public is not endangered or inconvenienced thereby. Howard v. Flathead

Independent Tel. Co., 49 M 197, 202, 141 P 153.

#### References

State ex rel. Tel. Co. v. Mayor of Red Lodge, 30 M 338, 340, 76 P 758; State ex rel. Crumb v. City of Helena, 34 M 67, 71, 85 P 744; City of Butte v. Montana Independent Tel. Co., 50 M 574, 581, 148 P 384; Marchi v. Brackman, 130 M 228, 299 P 2d 761, 764; Jones v. Bivins, — M —, 357 P 2d 22, 35; Mountain States Power Co. v. City of Forsyth, 41 F Supp 389, 390.

### Collateral References

Electricity 3; Telegraphs and Telephones 10.

29 C.J.S. Electricity § 16; 86 C.J.S. Telegraphs, Telephones, Radio, and Television § 23 et seq.

52 Am. Jur. 57, Telegraphs and Telephones, §§ 28 et seq.

Regulations or provisions upon requiring physical connection of telephone lines. 16 ALR 352.

Stringing telephone wires across railroad right of way. 18 ALR 619.

Right and duty of telephone companies to make or discontinue physical connection of exchanges or lines. 76 ALR 953.

Rights in right of way for telephone, telegraph or electric power line as against landowner. 6 ALR 2d 208.

Electric light or power line in street or highway as additional servitude. 58 ALR 2d 525.

70-302. (6646) Construction and connection. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph or telephone within this state, and connect the same with other lines, and in case such persons or corporations cannot agree as to the compensation to be paid for the privilege of such connection, the acquiring of the right by the one to use the line of the other may be had in proceedings under Title 93, and the damages assessed and the right of connection granted as provided in Title 93.

History: En. Sec. 1001, Civ. C. 1895; re-en. Sec. 4401, Rev. C. 1907; re-en. Sec. 6646, R. C. M. 1921.

#### References

City of Butte v. Montana Independent Tel. Čo., 50 M 574, 580, 148 P 384.

#### Collateral References

Eminent Domain 36; Telegraphs and Telephones € 10.

29 C.J.S. Eminent Domain § 44.

Regulations or provisions upon requiring physical connection of telephone lines. 16 ALR 352.

Stringing telephone wires across railroad right of way. 18 ALR 619.

Right and duty of telephone companies to make or discontinue physical connection of exchanges or lines. 76 ALR 953.

70-303. (6647) Consolidation of competing lines forbidden. No telegraph or telephone company shall consolidate with or hold a controlling interest in the stock or bonds of any other telegraph or telephone company owning or having the control of a competing line, or acquire, by purchase or otherwise, any other competing line of telegraph or telephone.

History: En. Sec. 1002. Civ. C. 1895: re-en. Sec. 4402, Rev. C. 1907; re-en. Sec. 6647, R. C. M. 1921.

#### Collateral References

Telegraphs and Telephones 22. 86 C.J.S. Telegraphs, Telephones, Radio, and Television § 16.

# CHAPTER 4

#### TELEVISION

Purpose of act. Section 70-401.

70-402. Definitions.

License required for operation of VHF booster or VHF translator 70-403.

70-404. Application-contents.

Issuance of license—fee—additional information. 70-405.

Rules and regulations. 70-406.

70-407. Penalty for violation of act. 70-408. Television districts—purposes.

70-409. Organization of television districts authorized.

Areas includible in translator district. 70-410.

70-411. Petition to form district—signatures—contents.

Filing of petition-certification and transmittal to county commis-70-412.

70-413. Publication of petition-notice of meeting to consider petition-deposit for costs of publication.

Hearing on petition for district-adjournment-resolution creating 70-414. district or denying petition.

Naming of district-filing of order creating district. 70-415.

70-416. Appointment of trustees for district—qualifications—terms—vacancies.

70-417. Assessor to list television owners within district. Budget for district-levy and certification of tax. 70-418.

70-419. Treasurer of district—separate fund—warrants for disbursements.

70-420. Powers of districts.

70-421. Trustees not compensated—reimbursement of expenses.

70-422. Exemption of taxpayers who do not benefit from translator-affidavit.

70-423. Meetings of trustees.

70-424. False claim for exemption.

Abandonment of district—disposition of property and funds. 70-425.

70-401. Purpose of act. It is the purpose of this act to provide for the continuation of television service to all sectors of the state of Montana, particularly in those sparsely settled regions of this state that are unable to support their own television stations, through the authorization of the continued operation of VHF booster and VHF translator television broadcasting systems, and the authorization of the use of such booster and translator television broadcasting systems in those areas of this state where such systems do not now exist.

History: En. Sec. 1, Ch. 26, L. 1959.

### Collateral References

86 C.J.S. Telegraphs, Telephones, Radio, and Television § 316.

- 70-402. **Definitions.** For the purposes of this act, unless the context of any section requires otherwise;
- (a) "VHF booster system" or "booster television system" comprises electronic apparatus designed to receive, amplify and retransmit television signals on a single VHF television channel;
- (b) "VHF translator system" or "translator television system" comprises electronic apparatus designed to receive, amplify and retransmit television signals on a VHF television channel different from that received;
- (c) "VHF" or "very high frequency" comprises the radio frequency range between 30,000 kc and 300 mc;
- (d) "VHF channel" or "very high frequency channel" comprises the following television channels with the following transmission frequency:

	Frequency band
Channel No.	(Megacycles)
2	54 - 60
3	60 - 66
4	66 - 72
5	76 - 82
6	82 - 88
7	174 - 180
8	180 - 186
9	186 - 192
10	192 - 198
11	198 - 204
12	204 - 210
13	210 - 216

- (e) "Person" includes an individual, partnership, association, joint-stock company, trust, or corporation.
- (f) "Commission" means the public service commission of the state of Montana, as presently constituted.

History: En. Sec. 2, Ch. 26, L. 1959.

70-403. License required for operation of VHF booster or VHF translator system. No person shall operate a VHF booster system or booster television system, or a VHF translator system or translator television system within the boundaries of this state except under and in accordance with a license issued under the authority of the Montana public service commission, upon application therefor.

History: En. Sec. 3, Ch. 26, L. 1959.

### Collateral References

Licensing and control of telecast facilities. 15 ALR 2d 788.

70-404. Application—contents. Such application shall be directed to said commission and shall contain information concerning the ownership and location of said system, the type of system, the VHF channel or channels being utilized and the area of estimated coverage of said system, together with such other information both technical and nontechnical which the commission by its regulations shall require. It must appear from said application that the use or operation of such system will not cause to be transmitted any energy, communication or signal from this state to any other state, territory or possession of the United States, or to any place in any foreign country or to any vessel; or that the effects of such transmission extend beyond the boundaries of this state; or when interference is caused by such use or operation with the transmission of energy, communications, or signals from within this state to any place beyond its borders, or from any place beyond the borders of this state to any place within this state, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of this state.

History: En. Sec. 4, Ch. 26, L. 1959.

70-405. Issuance of license—fee—additional information. Upon receipt of an application which conforms to the requirements of the preceding section, and all regulations of the commission adopted pursuant thereto, the commission shall forthwith issue to the applicant a license, in a form to be prescribed by the commission, which shall authorize the continued operation of said system for a period of one (1) year thereafter. The fee for such license shall be in the amount of one dollar (\$1.00) per year. In the event that such application is for the construction or operation of a VHF booster system or VHF translator system which was not on the effective date of this act in operation within the boundaries of this state, the commission may require additional information with regard to the necessity for and convenience of such system and conduct such investigations and hearings as are deemed necessary to determine whether authorization of said system should be granted.

History: En. Sec. 5, Ch. 26, L. 1959.

70-406. Rules and regulations. The commission shall have the authority to adopt such rules and regulations, not inconsistent with law as it may deem necessary to carry out the provisions of this act.

History: En. Sec. 6, Ch. 26, L. 1959.

70-407. Penalty for violation of act. Any violation of the terms of this act shall constitute a misdemeanor, punishable by a fine of not more than fifty dollars (\$50.00).

History: En. Sec. 7, Ch. 26, L. 1959.

70-408. Television districts—purposes. The purposes of a television district shall be to serve the public interest, convenience, and necessity in the construction, maintenance and operation of television translator stations and any system necessary thereto by appropriate electric or electronic means for television program distribution, but said purposes are

not meant to include the construction or operation of community antenna systems, commonly known and referred to as cable TV systems.

History: En. Sec. 1, Ch. 198, L. 1961.

70-409. Organization of television districts authorized. Any area of the state may organize as a television district for the performance of functions provided for in this act.

History: En. Sec. 2, Ch. 198, L. 1961.

70-410. Areas includible in translator district. A television translator district may include a part or all of any county or may include areas in more than one county and may include any municipality located within such county or counties.

History: En. Sec. 3, Ch. 198, L. 1961.

70-411. Petition to form district—signatures—contents. A petition to form a district shall be presented to the county clerk and recorder of each of the counties in which any portion of the area is situated. Petitions shall be signed by owners of television sets within the proposed district, equal in number to not less than fifty-one per cent (51%) of the registered electors who are owners of television sets within the proposed district. The petition shall state the objects of the district and designate the boundaries thereof by section, the approximate number of people to be benefited thereby and shall contain a brief description of the proposed system including type of construction, location, approximate cost of the installation. It shall also state that the proposed district will be conducive to the public interest, convenience and necessity. It shall request that it be organized as a television district.

History: En. Sec. 4, Ch. 198, L. 1961.

Filing of petition—certification and transmittal to county commissioners. Such petition shall be filed with the county clerk and recorder of all counties in which the signers on the petition are located. If the petition is filed with more than one county clerk and recorder each petition shall state the number of signers on it and the name of the county where the petition containing the most signers is filed. Upon the filing of such petition or petitions the county clerk and recorder shall examine the petition and certify whether the required number of signers are found thereon and after the examination of the petition the county clerk and recorder of any county containing the least number of signers, if more than one county is involved, shall transmit the petition to the county clerk and recorder of the county containing the most signers. Within thirty (30) days following the receipt of such petitions the county clerk and recorder in the county containing the most names on the petitions shall transmit the petitions to the board of county commissioners of the county in which the greater number of petitioners reside together with his certificate and the certificates of any other county clerk and recorder as to the sufficiency thereof.

History: En. Sec. 5, Ch. 198, L. 1961.

70-413. Publication of petition—notice of meeting to consider petition—deposit for costs of publication. Upon receipt of a duly certified petition the board of county commissioners shall cause the text of the petition to be published once a week for at least three (3) consecutive weeks in a newspaper of general circulation within the county where the petition is presented. If any portion of the proposed district lies in another county the petition and notice shall likewise be published in that county. No more than five (5) names attached to the petition shall appear in the publication and notice but the number of signatures shall be stated. With the publication of the petition there shall be published a notice of the time of the meeting of the county commissioners when the petition will be considered stating that all persons interested may appear and be heard.

At the time of filing the petition the sponsors thereof shall cause to be deposited with the county clerk and recorder a sufficient sum of money to cover the cost of publication of all said notices. If the notices are not published the deposit shall be returned to whomsoever deposited the funds and if there is any surplus remaining after paying for such publication as herein provided it shall be returned to the original depositor or depositors and if a district is created the fees so expended are an obligation of the district and shall be repaid by the district to the depositors.

History: En. Sec. 6, Ch. 198, L. 1961.

70-414. Hearing on petition for district—adjournment—resolution creating district or denying petition. At the time set for hearing such petition or petitions the board of county commissioners shall hear all persons who desire to be heard relative to the creation of a television district. The board of county commissioners may, if they so desire and it appears to be desirable, adjourn the meeting for not to exceed thirty (30) days in time to further hear the petitioners and protestants, if any. After such hearing or hearings the board of county commissioners shall adopt a resolution either creating the proposed television district or denying the petition. If the board of county commissioners desires to create the television district they shall adopt a resolution describing the proposed system and describing the boundaries of such district, including type of construction, location, type and approximate cost of any installation to be made and finding that the district will be conducive to the public interest and convenience and thereby such district shall be created.

History: En. Sec. 7, Ch. 198, L. 1961.

History: En. Sec. 8, Ch. 198, L. 1961.

70-416. Appointment of trustees for district—qualifications—terms vacancies. The board of county commissioners, upon the creation of said district, and as a part of the order creating the district, shall appoint a board of three trustees to administer the affairs of the district. Each of said trustees shall be a resident and owner of a television set from within the district. The trustees so appointed upon creation of such district shall be appointed for staggered terms of one (1), two (2) and three (3) years; and if more than one county is involved, one of said trustees shall be appointed from the county having the least number of television sets that will be benefited by such district, and such trustee shall be given the three (3) year term; said trustees so appointed shall hold office for the term of their respective appointment or until his successor is appointed and qualified; at the end of the respective terms of said trustees, the then board of county commissioners shall appoint a new trustee for a three (3) year term, and in case of a vacancy by death, resignation, removal from the district or otherwise a trustee shall be appointed by the board of county commissioners to fill such vacancy to the end of the term of such trustee.

History: En. Sec. 9, Ch. 198, L. 1961.

70-417. Assessor to list television owners within district. A copy of the order creating the district shall be delivered to the county assessor of each county within the district and he shall, on or before the first (1st) day of August of any given year, prepare and certify a list of all persons owning television sets within such district and deliver a copy of such list to the board of trustees of said district.

History: En. Sec. 10, Ch. 198, L. 1961.

70-418. Budget for district—levy and certification of tax. The board of trustees shall, from said list so prepared by the county assessor, remove therefrom the names of any persons who have claimed exemption under this act and shall prepare a budget for the expenses for the next year, which budget together with the list of such persons residing in the district and subject to the special tax after all exemptions have been allowed as provided in this act shall be presented by September 1 to the board of county commissioners who shall levy the tax requested by said trustees; provided however, said tax shall not exceed the sum of fifteen dollars (\$15.00) per annum, per person owning a television set and the board of county commissioners shall levy such tax in accordance with the request herein mentioned, which said tax shall be certified to the county clerk and recorder and entered on the assessment books as against such persons and collected by the county treasurer as all other taxes are collected.

History: En. Sec. 11, Ch. 198, L. 1961.

70-419. Treasurer of district—separate fund—warrants for disbursements. The county treasurer shall be the treasurer for said district and hold said taxes as collected in a separate fund to be disbursed by him upon warrants drawn by the trustees, at least two of whom shall sign any warrant for the disbursement of such funds by the county treasurer.

History: En. Sec. 12, Ch. 198, L. 1961.

70-420. Powers of districts. A television district organized under this act, acting through its board of trustees herein provided for, may: (1) perform all the acts and take all the necessary or proper steps to assure that there will be a fair, efficient, and equitable distribution of television services within the area in order that all persons within such service area shall be supplied by means of an appropriate electrical or electronic system for television program distribution, but may not perform any acts or take any steps to construct or operate community antenna systems, commonly known and referred to as cable TV systems; such authorized system to provide such flexibility as to permit radical improvements in technical quality without rendering inoperative receivers therein but discontinuance of service by the district for improvements or repairs for a temporary period shall not be construed as rendering inoperative: (2) if necessary or proper in the furtherance of the objects of this act, acquire, build, construct, repair, own, maintain and operate any necessary stations transmitting simultaneous visual and aural signals intended to be received by the general public, relay stations, pick-up stations, or any other electrical or electronic system necessary; (3) make contracts to compensate any owner of land or other property for the use of such property for the purposes of this act; (4) make contracts with the United States, or any state, municipality or any department or agency of those entities for carrying out the general purposes for which the district is formed; (5) acquire by gift, devise, bequest, lease, or purchase, real and personal property, tangible or intangible, including lands, rights of way and easements, necessary or convenient for its purposes; (6) to make contracts of any lawful nature (including labor contracts or those for employees' benefits), employ engineers, laboratory personnel, attorneys, other technical or professional assistants, and any other assistants or employees necessary to carry out the provisions of this act; (7) issue warrants payable at the time stated therein to evidence the obligation to repay money borrowed or any other obligation incurred by the district, warrants so issued to draw interest at a rate fixed by the board not to exceed five per cent (5%) per year payable annually or semiannually as the board may prescribe; (8) contract indebtedness or borrow money for corporate purposes, and may issue revenue bonds therefor to be repaid from rates and charges, bearing interest at a rate not exceeding six per cent (6%) per annum, payable semiannually, the bonds not to be sold for less than par and accrued interest; (9) prescribe tax rates for the providing of services throughout the area in accordance with the provisions of this act; and (10) prescribe such installation or ready to serve charges to be used for any costs connected with preparation, acquisition, or construction of the system; (11) apply for, accept, and be the holder of any permit or license issued by or required under federal or state law.

History: En. Sec. 13, Ch. 198, L. 1961.

70-421. Trustees not compensated—reimbursement of expenses. The board of trustees of the district shall serve without compensation but will be reimbursed for reasonable expenses incurred in the operation of the television district.

History: En. Sec. 14, Ch. 198, L. 1961.

70-422. Exemption of taxpayers who do not benefit from translator—affidavit. The taxpayers in the television district who do not receive the signal of the television translator station or who receive direct reception from the television station from which the television translator repeats a signal or receive service through the medium of a community antenna system on which they are a subscriber in good standing will be exempt from the payment of the tax for the support of the television district provided they file an affidavit setting forth any of the grounds above mentioned, which affidavit shall be filed with the board of trustees who shall upon the receipt of such affidavit have the names of such persons so exempted from the tax stricken from the list of taxpayers certified to the board of county commissioners and shall not be liable for such tax.

History: En. Sec. 15, Ch. 198, L. 1961.

70-423. Meetings of trustees. The board of trustees shall meet once a month at a regular time and place to transact the business of the district, the time and place to be fixed by the trustees and any change in the time and place of meetings must be given by publication of notice in a newspaper most likely to give notice to the taxpayers within such district. All such meetings shall be open in their entirety to the public and all meetings shall be held at some place within the area of the television district.

History: En. Sec. 16, Ch. 198, L. 1961.

70-424. False claim for exemption. Any person or persons who shall make a false or fraudulent claim for exemption as provided in this act shall be guilty of a misdemeanor.

History: En. Sec. 17, Ch. 198, L. 1961.

70-425. Abandonment of district—disposition of property and funds. If at any time a petition for abandonment of the television district, signed by owners of television sets within the district, equal in number to not less than fifty-one per cent (51%) of the registered electors who are owners of television sets, is filed with the board of trustees, the board of trustees shall forthwith notify the board or boards of county commissioners which created the district, and such board or boards of county commissioners shall by resolution immediately declare the district abandoned. All properties and moneys remaining after the satisfaction of all debts and obligations of such abandoned district shall be deposited to the credit of the general fund of the county; and if the abandoned district embraced areas in more than one county, properties and moneys remaining after the satisfaction of all debts and obligations of such abandoned district shall be deposited to the credit of the general funds of such counties in proportion to the number of television sets in each county which were served by the district.

History: En. Sec. 18, Ch. 198, L. 1961.

## TITLE 71

## PUBLIC WELFARE AND RELIEF

- County poor—care of, by county commissioners, 71-101 to 71-125. Chapter 1.
  - Public Welfare Act part 1-to establish a state department of public
  - welfare and county departments of public welfare, 71-201 to 71-250. Public Welfare Act part 2—general relief—to provide aid to the unemployable, destitute and those made destitute through lack of employment and all those in need of public assistance not eligible or otherwise cared for under other parts of this act, 71-301 to 71-314.

    Public Welfare Act part 3—to provide for old age assistance to aged
  - persons in need in conformity with title 2 of the Federal Social Security Act of 1935 or as amended, 71-401 to 71-413.
  - Public Welfare Act part 4—to provide for aid to needy dependent children in conformity with part 4 of the Federal Social Security Act of 1935 or as amended, 71-501 to 71-510.
  - Public Welfare Act part 5-to provide for aid to needy blind individuals in conformity with title 10 of the Federal Social Security Act of 1935 or as amended, 71-601 to 71-614.
  - Public Welfare Act part 6-to provide for services for crippled children and child welfare services, in conformity with title 5, parts 2 and 3 of the Federal Social Security Act of 1935, or as amended, and transferring the powers and duties of the state bureau of child protection and the orthopedic commission to the authority and supervision of the state department of public welfare, 71-701 to 71-714.
  - Public Welfare Act—part 7 (Only Sec. 1 of part 7 of the Public Welfare Act is given in this compilation. The repealing and severability clauses are omitted), 71-801.
  - 9. Public Welfare Act part 8-appropriations, disposition of funds and disbursements, 71-901 to 71-904.
  - Public Welfare Act part 9—to provide for payments to persons having silicosis, 71-1001 to 71-1009. 10.
  - Sale of real property held by public welfare department, 71-1101 to 11. 71-1107.
  - 12. Permanently and totally disabled persons in need, 71-1201 to 71-1210.
  - 13. Privileges of blind and physically disabled persons, 71-1301, 71-1302.
  - 14. Services to the blind, 71-1401 to 71-1415.

### CHAPTER 1

### COUNTY POOR—CARE OF, BY COUNTY COMMISSIONERS

- Section 71-101. The board of county commissioners vested with control.
  - 71-102 to 71-105. Repealed.
  - 71-106. Support of poor and indigent persons—tax levy.
  - 71-107. Poor farm.
  - 71-108 to 71-110. Repealed.
  - 71-111. Contracts—when to be made.
  - 71-112. Repealed.
  - 71-113. Bond of contractor-duty of physician to examine and notify contractor.
  - 71-114. Persons falling sick to be cared for.
  - 71-115. Repealed.
  - Persons belonging to another county to be removed. 71-116.
  - Nonresidents furnished temporary relief. 71-117.
  - 71-118. County farm.

71-119. Repealed.

Burial of deceased soldiers, sailors and marines. 71-120.

71-121. County of residence to bear expense.

71-122. Person conducting burial to report expense.

71-123. Duty of county clerk.

71-124.

Person conducting burial not to receive compensation. Act not to apply to inmates of soldiers' home and nonresidents. 71-125.

# 71-101. (4521) The board of county commissioners vested with control. The board of county commissioners are vested with superintendence of the poor.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Statutes; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 1, p. 51, L. 1876; re-en. Sec. 955, 5th Div. Rev. Stat. 1879; re-en. Sec. 1609, 5th Div. Comp. Stat. 1887; re-en. Sec. 3200, Pol. C. 1895; re-en. Sec. 2050, Rev. C. 1907; re-en. Sec. 4521, R. C. M. 1921; amd. Sec. 1, Ch. 73, L. 1957.

### County Still Has Definite Obligations to Poor

The contention may not be sustained that since the enactment of Ch. 82, Laws 1937 (71-201 et seq.) known as the Public Welfare Act, the duty of caring for county poor rests in the state board of public welfare; while the state and federal governments now co-operate with the county in the matter, counties still have definite obligations to the poor and needy and must bear their proportionate share of social relief. State ex rel. Broadwater County v. Potter, 107 M 284, 287, 84 P 2d 796.

### Discretion of Commissioners

In enacting this section relative to the care by counties of their indigent sick, poor and infirm, the policy of the legislature has been to impose a wide discretion in the county commissioners and, in carrying out such policy, their power is not limited to placing the poor in the county poorhouse, where there is one, or to contract for their maintenance, but may, if they deem it proper, extend aid in the shape of fuel, groceries, clothing or by small doles of money, at their respective places of residence. Jones v. Cooney, 81 M 340, 263 P 429.

#### Repealed by Implication

While repeals by implication are not favored by the courts, nevertheless, held,

that some of the provisions of Ch. 82, Laws 1937 (71-201 et seq.) are in conflict with sections 71-101 et seq., relative to the county poor, among them section 71-101, placing the entire and exclusive superintendence of the poor in the board of county commissioners, and that such provisions are impliedly repealed by the chapter. State ex rel. Wilson v. Weir, 106 M 526, 534, 79 P 2d 305.

## Superintendent of Poor Farm Is "Employee," Not "Officer"

A superintendent of a county poor farm with the exclusive superintendence of which the county commissioners are charged under this section, who while using a county truck without permission on a private mission collided with plaintiff's automobile, was merely an employee of the county and not a "public officer." Gagnon v. Jones, 103 M 365, 368, 62 P 2d 683.

## Where County Not Liable under Respondeat Superior

Where county superintendent of the poor farm on a private mission with county truck collided with plaintiff's car, and county was sought to be held liable under doctrine of respondeat superior, held that the undisputed evidence introduced by the county showed the superintendent was not acting within the scope of his authority as the county's employee nor in regard to his business, opposed by presumptions, warranted a directed verdict in favor of the county. Gagnon v. Jones, 103 M 365, 369, 62 P 2d 683.

## Collateral References

Paupers 3.

70 C.J.S. Paupers § 3. 41 Am. Jur. 690, Poor and Poor Laws, §§ 13 et seq.

# 71-102. (4522) Repealed—Chapter 180, Laws of 1953.

#### Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.), relating to the duty of relatives to support persons without means, was repealed by Sec. 9, Ch. 180, Laws 1953. For present law, see secs. 71-233 to 71-240.

# 71-103. (4523) Repealed—Chapter 74, Laws of 1957.

Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.), relating to

support of intemperate person, was repealed by Sec. 1, Ch. 74, Laws 1957.

# 71-104. (4524) Repealed—Chapter 74, Laws of 1957.

Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; Sec. 1, Ch.

19, L. 1933), relating to when a person may receive relief from the county, was repealed by Sec. 1, Ch. 74, Laws 1957.

## 71-105. (4524.1) Repealed—Chapter 74, Laws of 1957.

Repeal

This section (Sec. 2, Ch. 19, L. 1933), relating to relief being worked out by able-

bodied male, was repealed by Sec. 1, Ch. 74, Laws 1957.

71-106. (4465.4) Support of poor and indigent persons—tax levy. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To provide for the care and maintenance of the indigent sick, or the otherwise dependent poor of the county; erect and maintain hospitals therefor, or otherwise provide for the same, and for said purposes to levy and collect annually, from each resident of the county, between the ages of twenty-one (21) and sixty (60) years a poll tax of two dollars (\$2.00) at a meeting of the board of county commissioners held in December of any year, to become effective as of January first of the following calendar year, and a tax on property not exceeding three-fifths (3/5) of one per cent (1%), which last mentioned levy shall be made at the time other tax levies are made on property, as provided by law, or either of such levies when both are not required, and to expend not to exceed five per cent (5%) of any such levy for the collection of said tax, or of any part thereof. Whenever a resolution is adopted levying a per capita tax the clerk of the board shall immediately prepare and deliver copies thereof to the county assessor and county treasurer. The county assessor after receiving such copy of resolution, when making an assessment of any property belonging to any person liable for the payment of such per capita tax must enter on the assessment list, and also on any statement given the taxpayer, showing the value of the property assessed, the amount of such per capita tax, and the county treasurer when collecting the taxes on such property shall at the same time collect the amount of such per capita tax as shown on said statement.

History: En. Subd. 5, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 165, L. 1941; amd. Sec. 1, Ch. 23, L. 1943. See history of Sec. 16-1001.

Temporary Additional Tax Levy (Laws 1961, Ch. 10)

An act to authorize in certain instances the boards of county commissioners to levy an additional tax of not to exceed eight (8) mills for the county poor funds; and providing for an effective date and a repealing clause.

Section 1. Whenever the boards of county commissioners of counties coming within the provisions of this act find

that the total amount that may be derived from all other sources will be inadequate to provide the revenue necessary to meet the appropriations for expenditures to be set forth in the poor fund section of the county budget, such county commissioners shall have the power and the authority to levy, not to exceed eight (8) mills, or so much thereof as may be necessary, to meet such expenditures as an additional levy for the county poor fund after receiving a certificate authorizing them so to do, issued by the state board of equalization as in this act provided.

Section 2. On or before the second Monday in July, the boards of county commissioners of counties desiring to avail themselves of the provisions of this act shall submit a certified copy of their county poor fund budget to the state examiner and a like certified copy of such budget to the state department of public welfare. The state examiner shall examine such budget and if it is found by the state examiner that such budget is in compliance with the laws of this state and the rules and regulations of such examiner's office, he shall so certify and transmit such certified copy of the budget, together with his certificate thereon, to the state board of equalization. The state department of public welfare shall examine such budget and if it finds the expenditures and revenues of the previous year are correct and the estimated expenditures and revenues for the current year are approximately correct, then such department shall transmit such copy, together with its certificate, to the state board of equalization.

Section 3. The state board of equalization shall, on receipt of the certified copies of such county poor fund budget containing certificates as provided in section 2 hereof, examine such documents and if such board finds that a levy as authorized in section 1, or any part thereof, in addition to all other poor fund revenues is necessary, the said board shall certify the amount of the levy to be made by the county commissioners of such county and transmit such certificates to such board of county commissioners who shall thereupon be authorized to make such levy as is authorized.

Section 4. This act shall be in full force and effect from the first day of July, 1961 to the thirtieth day of June, 1963.

Section 5. All acts and parts of acts in conflict herewith are hereby repealed.

Prior laws, identical in nature, were Laws 1955, Ch. 73, in force from July 1, 1955 to June 30, 1957; Laws 1957, Ch. 36, in force from July 1, 1957 to June 30, 1959; and Laws 1959, Ch. 46, in force from July 1, 1959 to June 30, 1961.

# Power to Maintain County Re-employment Offices

The power of boards of county commissioners to establish county re-employment offices, while not in express terms, flows from powers expressly conferred with re-

lation to the care of the poor, such as this section, giving them broad discretionary power to "otherwise provide for the same," and on application for writ of supervisory control to review judgment of district court in upholding the action of a board declaring an emergency necessitating appropriation of additional moneys for its poor fund budget from anticipated revenue, held such authority exists, the cost thereof chargeable against the county poor fund. State ex rel. Barr v. District Court, 108 M 433, 435, 91 P 2d 399.

### Sick and Poor

For a decision concerning the validity of a contract entered into by the board of county commissioners for the care of the poor under former statutes, see Lebcher v. Commissioners of Custer County, 9 M 315, 23 P 713.

The board of county commissioners did not have the power to erect and maintain a detention hospital for persons affected with contagious or pestilential diseases, at the expense of the county. Yegen v. Board of County Commrs., 34 M 79, 86, 85 P 740.

In enacting section 71-101 et seq., relative to the care by counties of their indigent sick, poor and infirm, the policy of the legislature has been to impose a wide discretion in the county commissioners and, in carrying out such a policy, their power is not limited to placing the poor in the county poorhouse, where there is one, or to contract for their maintenance, but may, if they deem it proper, extend aid in the shape of fuel, groceries, elothing or by small doles of money, at their respective places of residence. Jones v. Cooney, 81 M 340, 346, 263 P 429.

While under section 16-3211 (since repealed), the county auditor is made the superintendent of the poor who must care for and examine all claims that may be made upon the county for charity, he must do so under such rules and regulations as the commissioners may prescribe in their discretion. Jones v. Cooney, 81 M 340, 263 P 420

### Collateral References

Paupers €3. 70 C.J.S. Paupers §3.

Reimbursement of public for financial assistance to aged persons. 29 ALR 2d 731.

71-107. (4465.5) Poor farm. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To provide a farm for the support of the poor of the county, and make regulations for working the same.

History: En. Subd. 6, Sec. 1, Ch. 100, L. 1931. See history of Sec. 16-1001.

Collateral References
Paupers 9.
70 C.J.S. Paupers § 17.

## 71-108. (4525) Repealed—Chapter 74, Laws of 1957.

Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; Sec. 1, Ch. 29, L. 1909; Sec. 1, Ch. 50, L. 1933; Sec. 1, Ch.

131, L. 1943), relating to the care of county poor and indigent sick and infirm, was repealed by Sec. 1, Ch. 74, Laws 1957.

## 71-109. (4526) Repealed—Chapter 74, Laws of 1957.

Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; Sec. 2, Ch. 29, L. 1909; Sec. 1, Ch. 45, L. 1911; Sec. 2, Ch. 50, L. 1933; Sec. 2, Ch. 131, L. 1943;

Sec. 1, Ch. 124, L. 1949), relating to contracts for care of poor and indigent sick and infirm, was repealed by Sec. 1, Ch. 74, Laws 1957.

# 71-110. (4527) Repealed—Chapter 74, Laws of 1957.

Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; Sec. 1, Ch. 31, L. 1917; Sec. 1, Ch. 55, L. 1927; Sec. 3, Ch.

131, L. 1943), relating to the contract for medicines and medical attendance, was repealed by Sec. 1, Ch. 74, Laws 1957.

71-111. Contracts—when to be made. Whenever, under existing laws, the board of county commissioners is authorized to make contracts for one year and no time is specified when the contracts shall be made, it shall be the duty of the county commissioners hereafter whenever possible, to make such contracts in the month of June of each year so that they will be better enabled to prepare their budget which under existing laws, must be prepared during the month of July. If any contracts have heretofore been made at any other time of the year and the contracts expire before the month of June, 1944, the county commissioners shall make a contract for the period between the time when the contracts now expire and June, 1944, and thereafter make the contracts as of the month of June each year.

History: En. Sec. 4, Ch. 131, L. 1943.

# 71-112. (4528) Repealed—Chapter 74, Laws of 1957.

Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.), relating to the

board's rejection of any bid, was repealed by Sec. 1, Ch. 74, Laws 1957.

71-113. (4529) Bond of contractor—duty of physician to examine and notify contractor. Any person with whom any such contract is made must execute a bond to the state in a sum not less than one thousand nor more than five thousand dollars, with two or more sureties, conditioned for the faithful performance of his contract; said bond to be approved by and filed with the chairman of the board. It is the duty of the physician with whom the contract for medical attendance is made to examine each week any person who is a charge upon the county, and if, after such examination, he is satisfied that such person is able to support and maintain himself, he must so notify the contractor having the person in charge, by leaving with the contractor a notice of the fact that such person requires no further

medical attendance, and file a duplicate thereof with the clerk of the board. After the serving of said notice and filing the duplicate thereof with the clerk, the person mentioned therein ceases to be a charge upon the county.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 9, p. 54, L. 1876; re-en. Sec. 963, 5th Div. Rev.

Stat. 1879; re-en. Sec. 1617, 5th Div. Comp. Stat. 1887; re-en. Sec. 3208, Pol. C. 1895; re-en. Sec. 2058, Rev. C. 1907; re-en. Sec. 4529, R. C. M. 1921.

71-114. (4530) Persons falling sick to be cared for. When any nonresident without means is sick within any county in this state, and not able to pay his board, nursing, or medical attendance, the board must, on application being made, give assistance to such person as is necessary, and if the person dies, the board must give him a decent burial, and make allowance for the expenses incurred and order the same to be paid out of the county treasury.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 10, p. 54, L. 1876; re-en. Sec. 964, 5th Div. Rep. Stat. 1879; re-en. Sec. 1618, 5th Div. Comp. Stat. 1887; re-en. Sec. 3209, Pol. C. 1895; re-en. Sec. 2059, Rev. C. 1907; re-en. Sec. 4530, R. C. M. 1921.

## Operation and Effect

Where an indigent nonresident is injured within county and requires immediate

medical and surgical attention and hospitalization and is removed to another county to obtain such treatment the county in which the injury occurred is liable. Musselshell County v. Petroleum County, 118 M 1, 161 P 2d 905, 908.

## Collateral References

Paupers \$43(1). 70 C.J.S. Paupers § 72.

# 71-115. (4531) Repealed—Chapter 74, Laws of 1957.

#### Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458 Bannack Stat.; Sec. 1, Ch. 91, L. 1931; Sec. 1, Ch. 19, Ex. L. 1933), re-

lating to the application of persons seeking relief, was repealed by Sec. 1, Ch. 74, Laws 1957.

71-116. (4532) Persons belonging to another county to be removed. When application is made, if it appears to the satisfaction of the board that the person applying has resided in the county for one (1) year, he is entitled to the relief provided by this chapter; but if on examination it appears that the applicant is a resident of some other county of the state, the board may provide him with transportation funds to move to the county of which he is a resident.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 12, p. 54, L. 1876; re-en. Sec. 966, 5th Div. Rev. Stat. 1879; re-en. Sec. 1620, 5th Div. Comp. Stat. 1887; re-en. Sec. 3211, Pol. C. 1895; re-en. Sec. 2061, Rev. C. 1907; re-en. Sec.

4532, R. C. M. 1921; amd. Sec. 2, Ch. 91, L. 1931; amd. Sec. 2, Ch. 19, Ex. L. 1933.

#### Collateral References

Paupers 19(7), 32. 70 C.J.S. Paupers §§ 32, 54.

71-117. (4533) Nonresidents furnished temporary relief. Persons who have not been resident of a county one (1) year may be furnished relief by the commissioners in cases of extreme necessity and destitution.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 13, p. 55, L. 1876; re-en. Sec. 967, 5th Div. Rev. Stat. 1879; re-en. Sec. 1621, 5th Div. Comp. Stat. 1887; re-en. Sec. 3212, Pol. C. 1895; re-en. Sec. 2062, Rev. C. 1907; re-en. Sec.

4533, R. C. M. 1921; amd. Sec. 3, Ch. 91, L. 1931; amd. Sec. 3, Ch. 19, Ex. L. 1933.

#### Collateral References

Paupers \$43(1). 70 C.J.S. Paupers § 72. 71-118. (4534) County farm. The board may purchase, improve, and keep in repair a tract of land not exceeding one hundred and sixty (160) acres, to be known as the county farm, and to erect thereon suitable buildings for the use, health, and employment of all persons as are a county charge, and the county farm, and the buildings thereon, must be under such rules and regulations as the board orders. It may also provide for the care, support, and maintenance of the sick, poor, and infirm of the county upon such farm.

History: Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 14, p. 55, L. 1876; re-en. Sec. 968, 5th Div. Rev. Stat. 1879; re-en. Sec. 1622, 5th Div. Comp. Stat. 1887; re-en. Sec. 3213, Pol. C. 1895; re-en. Sec. 2063, Rev. C. 1907; re-en. Sec. 4534, R. C. M. 1921; amd. Sec. 2, Ch. 73, L. 1957.

#### References

Jones v. Cooney, 81 M 340, 345, 263 P 429; Gagnon v. Jones, 103 M 365, 368, 62 P 2d 683; Goetschius v. Lasich, 137 M 465, 353 P 2d 87, 93.

### Collateral References

Paupers \$45. 70 C.J.S. Paupers § 77.

## 71-119. (4535) Repealed—Chapter 74, Laws of 1957.

Repeal

This section (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.) relating to

surplus moneys in the poor fund, was repealed by Sec. 1, Ch. 74, Laws 1957.

71-120. (4536) Burial of deceased soldiers, sailors and marines. It shall be the duty of the board of commissioners of each county in this state to designate some proper person in the county, who shall be known as veterans' burial supervisor, preferably an honorably discharged soldier, sailor or marine, whose duty it shall be to cause to be decently interred the body of any honorably discharged person, whether male or female, and including nurses, who shall have served in any branch of the armed services of the United States and who may hereafter die. Such burial shall not be made in any burial grounds or cemetery, or in any portion of any burial grounds or cemetery, used exclusively for the burial of pauper dead; provided, (1) the expense of burial shall be the sum of one hundred fifty dollars (\$150.00), to be paid by the county commissioners of the county in which the deceased was an actual bona fide resident at the time of death, and provided (2) that the benefits hereof shall not be available in the case of any decedent whose executor, administrator or heirs waive the benefits hereof.

In the event any such honorably discharged person, male or female, who shall have served in the armed services of the United States, and who is a resident of the state of Montana, shall die while temporarily absent from the state or county of his residence, then the provisions of this act shall apply, and the burial expenses not exceeding the amount herein specified shall be paid in the same manner as above provided.

Whenever any such honorably discharged person, male or female hereinbefore described shall die at any public institution of the state of Montana, other than the state soldiers' home, and burial for any cause shall not be made in the county of the former residence of the deceased, the officers of said state institution, as aforesaid, shall provide the proper burial herein prescribed except that the expense of each burial shall not exceed the sum herein allowed, which expense shall be paid by the county in which the decedent resided at the time of entry into such institution, but no such burial shall be covered by any special or standing contract whereby the cost of burial is reduced below the maximum hereinbefore fixed, to the disparagement of proper interment.

History: En. Sec. 1, Ch. 39, L. 1903; re-en. Sec. 2065, Rev. C. 1907; amd. Sec. 1, Ch. 89, L. 1909; amd. Sec. 1, Ch. 109, L. 1911; amd. Sec. 1, Ch. 178, L. 1919; amd. Sec. 1, Ch. 194, L. 1921; re-en. Sec. 4536, R. C. M. 1921; amd. Sec. 1, Ch. 181, L. 1931; amd. Sec. 1, Ch. 163, L. 1937; amd.

Sec. 1, Ch. 52, L. 1939; amd. Sec. 1, Ch. 25, L. 1945.

Collateral References
Army and Navy \$\infty 53.
6 C.J.S. Army and Navy \\$ 63.

71-121. (4537) County of residence to bear expense. The expenses of such burial shall be paid by the county in which such soldier, sailor, or marine dies, but if such deceased person has a residence in another county in this state than the one paying the expenses, the county of his residence shall refund the money advanced by the county where he died. Expenses of such funeral shall be audited and paid as other expenses are audited and paid by the county.

History: En. Sec. 2, Ch. 39, L. 1903; re-en. Sec. 2066, Rev. C. 1907; re-en. Sec. 4537, R. C. M. 1921.

71-122. (4538) Person conducting burial to report expense. It shall be the duty of the person appointed as provided in section 71-120 to cause such deceased person to be buried as provided in this act, and he shall immediately report his action to the clerk of the board of county commissioners, setting forth all the facts, together with the name, rank, or command, so far as is known, to which the deceased belonged, as such soldier, sailor, or marine, the date of death, place of burial, and his occupation while living, and also an itemized statement of the expenses incurred by reason of such burial.

History: En. Sec. 3, Ch. 39, L. 1903; 1, Ch. 109, L. 1911; re-en. Sec. 4538, R. C. re-en. Sec. 2067, Rev. C. 1907; amd. Sec. M. 1921.

71-123. (4539) Duty of county clerk. It shall be the duty of the clerk of the board of county commissioners, upon receiving the report and statement of expenses provided for in this act, to transcribe, in a book to be kept for that purpose, all the facts contained in such report concerning such soldier, sailor, or marine. It shall also be the duty of said clerk, upon receiving the report of the burial of such deceased person, to make application to the proper authorities under the government of the United States for a suitable headstone, as provided by act of Congress, and to cause the same to be placed at the head of the grave of such soldier, sailor, or marine, the expense of which shall not exceed the sum of ten dollars for cartage of and properly setting up each stone. The expense thus incurred shall be audited and paid as provided in section 71-121 for the burial expenses.

History: En. Sec. 4, Ch. 39, L. 1903; re-en. Sec. 2068, Rev. C. 1907; re-en. Sec. 4539, R. C. M. 1921.

71-124. (4540) Person conducting burial not to receive compensation. The person appointed as provided in section 71-120 shall not receive any

compensation for any duties he may perform in compliance with this

History: En. Sec. 5, Ch. 39, L. 1903; re-en. Sec. 2069, Rev. C. 1907; re-en. Sec. 4540, R. C. M. 1921.

71-125. (4541) Act not to apply to inmates of soldiers' home and non-This act shall not apply to such soldiers, sailors or marines as may hereafter die in the state soldiers' home in this state, and this act shall not apply to such soldiers, sailors or marines who, at the time of their death, shall not have a legal residence within this state.

History: En. Sec. 6, Ch. 39, L. 1903; 4541, R. C. M. 1921; amd. Sec. 1, Ch. 125, re-en. Sec. 2070, Rev. C. 1907; re-en. Sec. L. 1931.

## CHAPTER 2

PUBLIC WELFARE ACT PART I—TO ESTABLISH A STATE DEPARTMENT OF PUBLIC WELFARE AND COUNTY DEPARTMENTS OF PUBLIC WELFARE

Creation of department. Section 71-201.

Appointment of state board-creation-salary-bond. 71-202.

71-203. Powers and duties of the state board.

- Authority of board—disclosure of certain information forbidden. 71-204. Authority of state department—federal funds—conformity. 71-205.
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71-207. Legal services.

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- Board to act as agency of federal government-assistance to ward 71-211. Indians.

71-212. State grants-in-aid.

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- 71-239. State department subrogated to recipient's cause of action against relatives.
- 71-240. Commencement of action—disbursement of funds collected.
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- 71-242. Award of public assistance—ineligibility upon transfer of property, when
- 71-243. Filing of lien-indexing-priority.
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- 71-247. Recovery from the estate of a decedent-claim for assistance paid.
- 71-248. Lien not to sever a joint tenancy or affect the right of survivorship.
- 71-249. Prevention of exploitation of recipients.
- 71-250. Disposition of sums recovered.

71-201. Creation of department. There is hereby created and established a state department of public welfare which shall consist of a state board of public welfare, a state administrator of public welfare and such other officers and employees as may be hereinafter authorized.

History: En. Sec. 1, Part 1, Ch. 82, L. 1937.

## Constitutionality

Legislative control over counties is supreme, except as restricted by the constitution, and while the duty to care for the poor is primarily an obligation of the counties under Art. X, sec. 5 of the state Constitution, the state may offer co-operation and assistance, and the legislature has the right to enact provisions, binding upon the counties, as to how they shall care for their poor, even though such action may amount to dictation to them concerning expenditures of their own funds. Not violative also of Art. XII, sec. 4, Constitution. State ex rel. Wilson v. Weir, 106 M 526, 532, 534, 79 P 2d 305.

# County Board Rules Must Conform to Statute

The rules and regulations adopted by a county board of public welfare must conform to, and not be inconsistent with the positive provisions of the statutes, the power given to the board in that behalf not authorizing it to change the form of relief prescribed by the legislature, under the claim that by certain provisions of the act it is given discretion in choosing the kind or form of relief it may award. State ex rel. Wilson v. Weir, 106 M 526, 530, 79 P 2d 305.

# How Exhaustion of Poor Fund Remedied

Exhaustion of the county poor fund out of which county welfare board applica-

tions for relief must be paid, held no excuse for declining to issue warrants or checks thereon, since, in such event, a special tax levy may be made, unless prohibited by the constitution, or assistance may be asked from the state welfare fund. State ex rel. Wilson v. Weir, 106 M 526, 530, 79 P 2d 305.

# Repealing by Implication Statutes on County Poor

While repeals by implication are not favored by the courts, nevertheless, held, that some of the provisions of Ch. 82, Laws 1937 (71-201 et seq.) are in conflict with sections 71-101 et seq., relative to the county poor, among them section 71-101, placing the entire and exclusive superintendence of the poor in the board of county commissioners, and that such provisions are impliedly repealed by the chapter. State ex rel. Wilson v. Weir, 106 M 526, 534, 79 P 2d 305.

### References

State ex rel. Barr v. District Court, 108 M 433, 436, 91 P 2d 399; State ex rel. Nelson v. Board of County Commrs., 111 M 395, 396, 109 P 2d 1106 (reference is to Public Welfare Act as a whole); State ex rel. Lewis and Clark County v. State Board of Public Welfare, 112 M 380, 387, 117 P 2d 259 (refers to Public Welfare Act as a whole); State ex rel. International Union of Mine, Mill & Smelter Workers v. Montana State Dept. of Public Welfare, 136 M 283, 347 P 2d 727; Anderson v. United States Civil Service Commission, 119 F Supp 567, 573.

- 71-202. Appointment of state board—creation—salary—bond. (a) The state board of public welfare shall consist of five (5) members appointed by the governor with the advice and consent of the senate on the basis of a broad experience and interest in civic affairs and matters of public welfare. The members of the state board, no more than three (3) of whom shall be of the same political party, shall be appointed on or before February 1st of each year in which the terms of members expire, to hold office for overlapping terms of four (4) years each; provided, however, that the persons heretofore appointed and now serving as such shall constitute the state board of public welfare under this act, until their successors are appointed. The governor shall fill the first two (2) vacancies in the state board as now constituted by the appointment of members whose terms shall expire on March 3, 1955, and shall fill the remaining three (3) vacancies in the state board as now constituted by the appointment of members whose terms shall expire on March 3, 1957. Board members may be removed by the governor for cause.
- (b) Each member of the state board shall be a citizen of the United States and a resident of the state of Montana for a period of five (5) years immediately preceding the date of his appointment. Appointments to fill vacancies in the membership of the state board shall be made by the governor for the remaining portion of such term.
- (c) The members of the state board shall take and subscribe to the constitutional oath of office and shall furnish a surety company bond conditioned upon the faithful and proper discharge of their duties in the amount of five thousand dollars (\$5,000.00) each, running to the state of Montana, the premium of which shall be paid by the state.
- (d) The governor shall designate the chairman of the state board and the state board shall elect such remaining officers of the board as it may deem necessary.
- (e) Each member of the state board of public welfare shall receive fifteen dollars (\$15.00) per diem for each day actually spent in the performance of his duties and his actual necessary traveling and other expenses in going to, attending and returning from meetings of the board, and his actual and necessary traveling and other expenses incurred in the discharge of such duties as may be requested of him by a majority vote of the board, but in no event shall a member's per diem payments exceed one thousand dollars (\$1,000.00) in any one (1) year. No member of the state board shall have any direct financial interest in or profit by any of the operations of the state department of public welfare or any of its agencies.

Per diem and expenses of state board members shall, upon claims being presented according to state law, be paid out of funds appropriated to the state department of public welfare.

History: En. Sec. 2, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 26, L. 1953; amd. Sec. 1, Ch. 117, L. 1957.

#### References

State ex rel. Broadwater County v. Potter, 107 M 284, 287, 84 P 2d 796.

71-203. Powers and duties of the state board. (1) In co-operation with the governor the state board shall select and appoint an administra-

tive officer for the state department of public welfare who shall be known as the state administrator and who shall have such tenure of office, salary and administrative per diem and travel expense as the state board may establish, with the exception that the salary of said state administrator shall not exceed five thousand (\$5,000.00) dollars per year. The state administrator shall be selected and appointed with due regard to the education, training and ability necessary in public welfare administration and organization and shall have been a resident of the state of Montana at least five years prior to his appointment. The state administrator shall be bonded in the sum of twenty-five thousand (\$25,000.00) dollars, the premium of which will be paid by the state.

(2) Within six months after the adoption and approval of this act it shall be the duty of the state board to establish and maintain minimum standards of service and personnel and to formulate salary schedules for the classified personnel, based upon training, experience and ability, for employees selected for positions in the state office of the state department and in county departments.

A merit system when practical but not later than one (1) year from and after the effective date of this act shall be established and maintained pertaining to qualifications for appointments, tenure of office, annual merit ratings, releases, promotions and salary schedules and the state board shall cause examinations to be held from time to time throughout the state for the purpose of establishing an available qualified list in order of merit of persons eligible for appointment. Personnel standards shall conform in so far as possible with general standards as established or required by the federal social security board.

History: En. Subd. (a) and (b), Sec. 3, Part 1, Ch. 82, L. 1937.

71-204. Authority of board—disclosure of certain information forbidden. The state board is charged with the authority and duty to exercise general supervision and control over all activities and agencies as provided for in each part of this act.

The state board shall be limited in function to that of general policy and rules and regulations and all administrative and executive authority, functions and duties shall be vested in the state administrator, subject to the authority of the state board.

The state board shall be responsible for the adoption of such general policies, rules and regulations as are necessary for the government of the state department, county departments or any of its agencies, including specific regulations to prohibit political activities by employees of the state and county departments of public welfare. All such policies, rules and regulations shall conform to the Federal Social Security Act, the rules and regulations issued by the federal social security administration and also shall conform to the State Welfare Act, and all policies, rules and regulations so adopted by the state board shall be binding upon the several county departments and county boards of public welfare.

The use or disclosure of information concerning applicants or recipients of public assistance for purposes not directly connected with the administra-

tion of such assistance, shall be unlawful, and shall constitute a misdemeanor. The state department of public welfare shall adopt all rules and regulations necessary to give effect to this provision.

History: En. Subd. (c), Sec. 3, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 129, L. 1939; amd. Sec. 1, Ch. 117, L. 1941; amd. Sec. 1, Ch. 199, L. 1951.

NOTE.—The Federal Social Security Act referred to in this section will be found in the United States Code, Title 42, sec. 301 et seq.

#### References

State ex rel. Wilson v. Weir, 106 M 526, 530, 79 P 2d 305; State ex rel. Dean v. Brandjord, 108 M 447, 458, 92 P 2d 273; State ex rel. Nelson v. Board of County Commrs., 111 M 395, 396, 109 P 2d 1106.

71-205. Authority of state department—federal funds—conformity. The state department of public welfare is hereby authorized and it shall be its duty to administer and supervise all federal funds allocated to the state and all state funds appropriated to the state department of public welfare, for the activities and purposes set forth under each part of this act. The state department of public welfare is also hereby authorized and it shall be its duty to do all things necessary, in conformity with federal and state laws, for the proper fulfillment of the purposes set forth in this act.

History: En. Subd. (d), Sec. 3, Part 1, Ch. 82, L. 1937.

### Disbursement of Funds-Supervision

An application for a writ of injunction lies to prevent the delivery of a check for \$150,000 made in favor of the United States in behalf of the works progress administration by the state public welfare board in payment of materials and supplies to be used in construction of public works sponsored by the state, since it is the duty of the board to supervise the expenditure of state funds appropriated for its use. State ex rel. Browning v. Brandjord, 106 M 395, 400, 81 P 2d 677.

### Mandate

Mandate was issued by the supreme court to compel state board of public welfare to forthwith present to the state board of examiners written application setting forth the circumstances confronting it with reference to the need for money to carry out the relief program in Silver Bow county and requesting authorization for expenditures to meet the relief requirements in Silver Bow county, Montana. State v. Fouse, 137 M 483, 353 P 2d 755, 757.

#### References

State ex rel. Dean v. Brandjord, 108 M 447, 458, 92 P 2d 273.

71-206. Records to be maintained and reports rendered. The state department of public welfare shall maintain such records and render such reports as may be required by the federal board and such additional records and reports as shall be found necessary for state purposes or required by the state examiner. County departments shall likewise be required to maintain such records and render such reports as the state board may require.

All receipts of moneys, goods or property and all disbursements therefrom shall be subject to examination and audit by the state examiner.

The fiscal rules and regulations of the United States government, as enjoined upon the states in respect to the Federal Social Security Act, shall be used by the state and county departments as a method of accounting for all joint federal state funds.

History: En. Subd. (e), Sec. 3, Part 1, Ch. 82, L. 1937.

NOTE.—The Federal Social Security Act referred to in this section will be found in the United States Code, Title 42, sec. 301 et seq.

71-207. Legal services. The attorney general of the state shall act as legal adviser to the state department of public welfare and shall perform

such legal services as may be required and he is hereby empowered to employ such other and additional counsel as may be necessary for this purpose, and may fix the compensation therefor, provided, however, that the total sum per annum for the service shall not exceed twenty-four hundred (\$2400.00) dollars, which compensation shall be paid out of state public welfare funds.

History: En. Sec. 4, Part 1, Ch. 82, L. 1937.

71-208. Divisions of administration. The administrator, with the approval of the state board, may establish divisions in the state department for the administration of this act, and may allocate and reallocate functions between divisions as may be necessary or desirable for competent administration.

History: En. Sec. 5, Part 1, Ch. 82, L. 1937.

71-209. Powers and duties of the state administrator. (a) The administrator shall be the executive and administrative officer of the state department of public welfare and shall act as secretary of the state board. Before each regular biennial meeting of the legislative assembly he shall prepare and submit to the state board of public welfare for its consideration budget estimates of all funds required to be appropriated by the legislative assembly for the operation of the department during the two next ensuing fiscal years as fiscal years are defined by section 59-701. These budget estimates shall contain all information necessary for their consideration. After these budget estimates have been considered by the state board of public welfare, but not later than November 1, the administrator shall submit these budget estimates to the state board of examiners with request for appropriations.

After the close of the fiscal year in each even-numbered calendar year, the state administrator shall prepare a report to the governor of the state for the two preceding fiscal years, showing the operations of the department, furnishing information about all its principal activities giving the source and amounts of all funds received and the purposes for which they have been expended. It shall contain such statistical information and supplementary data as the administrator may deem pertinent or the governor may request. The report shall also contain such recommendations for legislation as experience may indicate to be desirable. The report for the period terminating June 30, 1940, shall also include the period between March 1, 1938, and June 30, 1938. The report shall be printed and submitted to the governor not later than October 15. The administrator shall prepare such interim reports as he may deem proper or the governor may require.

(b) In conformity with the merit system governing the selection and entire status of officers and employees in the state department of public welfare and in all county departments of public welfare in the state of Montana, adopted by the state board of public welfare and approved by the social security board, the state administrator shall appoint such other state department and supervisory field personnel as may be necessary for the efficient performances of the activities of the state department. The ad-

ministrator shall also supervise the appointment, dismissal and entire status of the public assistance staff attached to the county boards of public welfare in accordance with the merit system. All state department and county department personnel shall be legal residents of the state of Montana, unless it is impossible to find residents of the state possessing qualifications required by the merit system.

History: En. Sec. 6, Part 1, Ch. 82, L. 1937; amd. Sec. 2, Ch. 129, L. 1939; subd. (b) amd. Sec. 2, Ch. 117, L. 1941.

- 71-210. Authority and activities of the state department. The state department is hereby charged with authority over and administration or supervision of all the purposes and operations as set forth under the several parts of this act. The state department shall:
- (a) Administer or supervise all forms of public assistance, child protection and child welfare, including the provision of medical care payments in behalf of recipients of public assistance;
- Administer or supervise all child welfare activities, including importation and exportation of children; licensing and supervising of private and local child-caring agencies; the care of dependent, neglected and delinquent children in foster family homes, especially children placed for adoption or those of illegitimate birth;
- Give consultant service to private institutions providing care for the needy, indigent, handicapped or dependent adults;
- (d) Develop and co-operate with other state agencies provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions and vocational guidance and training of the blind;
- Provide services to county governments in respect to organization and supervision of county welfare departments for efficiency and economy in the administration of public welfare functions:
- Prescribe and maintain minimum standards and salary rates for public welfare personnel in state and county departments, establish rules and regulations to maintain such standards, and furnish to the county welfare boards a list of qualified personnel who are available for appointment. Develop policies relating to educational leave of employees of the department and prospective employees of the department; and develop policies relating to staff development needs of employees of the department. In so far as possible such personnel shall be residents of the county;
- Assist and co-operate with other state and federal departments, bureaus, agencies and institutions, when so requested, by performing services in conformity with the purposes of this act.

History: En. Subd. (a) to (g), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 2, Ch. 199, L. 1951; amd. Sec. 1, Ch. 72, L. 1957.

#### References

State ex rel. Browning v. Brandjord, 106 M 395, 402, 81 P 2d 677; State ex rel. Dean v. Brandjord, 108 M 447, 450, 92 P 2d 273; State ex rel. Frederick v. District Court, 119 M 143, 173 P 2d 626, 628.

#### Collateral References

Charities 42; Infants 13; Paupers

©=3, 52. 14 C.J.S. Charities § 53; 43 C.J.S. Infants § 13; 70 C.J.S. Paupers §§ 3, 79.

71-211. Board to act as agency of federal government—assistance to ward Indians. [The state department shall] act as the agent of the federal government in public welfare matters of mutual concern in conformity with this act and the Federal Social Security Act, and in the administration of any federal funds granted to the state to aid in the purposes and functions of the state department.

The counties shall not be required to reimburse the state department any portion of old age assistance, aid to needy dependent children or aid to needy blind or aid to the totally disabled paid to ward Indians, further provided that the federal government may reimburse the state of Montana in behalf of counties, providing general relief to ward Indians, a sum in lieu of taxes which the counties would collect if the lands of such ward Indians were not in trust status. A ward Indian is hereby defined as an Indian who is living on an Indian reservation set aside for tribal use, or is a member of a tribe or nation accorded certain rights and privileges by treaty or by federal statutes. If and when the Federal Social Security Act is amended to define a "ward Indian," such definition shall supersede the foregoing definition.

History: En. Subd. (h), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 3, Ch. 129, L. 1939; amd. Sec. 1, Ch. 219, L. 1947; amd. Sec. 3, Ch. 199, L. 1951; amd. Sec. 1, Ch. 141, L. 1953.

NOTE.—The Federal Social Security Act referred to in this section will be found in the United States Code, Title 42, sec. 301 et seq.

## Compiler's Note

The bracketed words "The state department shall" were inserted by the compiler as necessary for a proper reading of the section. Prior to the 1947 Code, this was subd. (h), Sec. 7, Part 1, Ch. 82, L. 1937, as amended.

## Applications of Ward Indians

Since the act makes no different arrangement for passing upon applications for relief to ward Indians from that applied to others, the county board has authority to pass upon such applications, and state's rights are fully protected by having the right to review, on its own motion, any decision of the county board (71-223). State ex rel. Williams v. Kamp, 106 M 444, 452, 78 P 2d 585.

# Medical Aid and Hospitalization of Ward Indians, State Expense

When not adequately provided for by the federal government, the state, without

reimbursement by the county in which such Indians live, must provide medical aid and services and hospitalization for ward Indians, this subdivision, special in character, superseding section 71-308 of the act, under which such services and hospitalization are made payable from poor fund. State ex rel. Williams v. Kamp, 106 M 444, 451, 78 P 2d 585.

# Relief to Emancipated Indians Shared by County

Where an Indian has been awarded a patent to tribal land, he is emancipated, becomes amenable to the laws of the state in which he resides, and as to emancipated Indians, the counties must bear their share of relief of all kinds. State ex rel. Williams v. Kamp, 106 M 444, 450, 78 P 2d 585.

## Relief to Ward Indians Provided by State without Reimbursement by County

Indian wards of the federal government are entitled to all the relief provided by Ch. 82, Laws 1937 (71-201 et seq.), to which the federal government contributes but such relief must be provided by the state and the state fund need not be reimbursed by the county. State ex rel. Williams v. Kamp, 106 M 444, 450, 78 P 2d 585

71-212. State grants-in-aid. In administering or supervising any state or federal funds appropriated or made available to the state department for public welfare purposes, the state department shall have the authority to:

- (a) Require as a condition for receiving grants-in-aid that the county shall bear the proportion of the total of local public assistance as is fixed by law relating to such assistance.
- (b) Make use of all legal processes to enforce the minimum standards prescribed by the state department under laws providing for grants-in-aid, provided that such standards shall not exceed in cost the amount derived from levies established by state law.
- (c) Require that each part of this act shall be in effect in all counties of the state.

History: En. Sec. 8, Part 1, Ch. 82, L. 1937.

Collateral References
Paupers \$\infty 43.
70 C.J.S. Paupers \ 72.

71-213. County departments to be established. There shall be established in each county of the state a county department of public welfare which shall consist of a county board of public welfare and such staff personnel as may be necessary for the efficient performance of the public welfare activities of the county. Provided, however, if conditions warrant and if two or more county boards enter into an agreement, two or more counties may combine into one administrative unit and use the same staff personnel throughout the administrative unit.

History: En. Subd. (a), Sec. 9, Part 1, Ch. 82, L. 1937.

Collateral References
Paupers 4.
70 C.J.S. Paupers § 5.

71-214. County commissioners ex officio county welfare board—compensation. The board of county commissioners, ex officio, shall be the county welfare board and is hereby authorized to devote such additional time for public welfare matters as may be found necessary. The members of the county welfare board shall receive the same compensation for their services and the same mileage when acting as the county board of public welfare as they receive when acting as the board of county commissioners and shall be limited as to meetings as now provided by law, and the compensation and mileage of the members of the board shall be paid from county funds. They may transact business as a board of county commissioners and as a county welfare board on the same day, and in such cases they shall be paid as a board of county commissioners, but shall in no case receive compensation for more than one day's work for all services performed on the same calendar day.

History: En. Subd. (b), Sec. 9, Part 1, Ch. 82, L. 1937; amd. Sec. 4, Ch. 129, L. 1939.

# Compensation Per Diem Payable by County

There being nothing in the act indicating that the state board must pay the per diem and mileage of county commissioners acting as ex officio members of the county welfare board, held that under this sub-

division declaring that the county board shall receive the same compensation as they receive as commissioners, the extra compensation is payable by the county (16-912). State ex rel. Broadwater County v. Potter, 107 M 284, 286, 84 P 2d 796.

### Collateral References

Counties 47; Paupers 4. 20 C.J.S. Counties § 81; 70 C.J.S. Paupers 5.

71-215. County attorney and clerk—ex officio duties. The county attorney shall be, ex officio, the legal advisor to the county welfare board

and shall render such legal services as the county department may require. The county clerk and recorder shall be, ex officio, the secretary and clerk of the county welfare board.

History: En. Subd. (c), Sec. 9, Part 1, Ch. 82, L. 1937.

20 C.J.S. Counties § 141; 27 C.J.S. District and Prosecuting Attorneys § 12(1); 76 C.J.S. Registers of Deeds § 9.

### Collateral References

Counties 89; District and Prosecuting Attorneys 7(1); Registers of Deeds 4.

71-216. Powers and duties of the county board. The county board of public welfare shall be responsible for establishing local policies and such rules and regulations as are necessary to govern the county department and local administration of public welfare activities except that all such policies and rules and regulations must be in conformity with general policies and rules and regulations established by the state board. The county board of public welfare shall review the determinations of eligibility and amount of payment to individuals made by the staff of the county department for conformity with the aforesaid rules and regulations. Determinations not in conformity will be referred to the staff by the county welfare board for appropriate action as authorized by said board.

History: En. Subd. (a), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 4, Ch. 199, L. 1951.

Collateral References
Paupers 7.
C.J.S. Paupers § 11.

#### References

State ex rel. Wilson v. Weir, 106 M 526, 530, 79 P 2d 305; State ex rel. Dean v. Brandjord, 108 M 447, 458, 92 P 2d 273.

Staff personnel—how selected, paid and controlled—dismissal. Each county board shall select and appoint from a list of qualified persons furnished by the state department such staff personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the state department, may appoint some fully qualified person listed by the state department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the state department shall have the authority to supervise such county employees in respect to the efficient and proper performance of their duties. The county board of public welfare shall not dismiss any member of the staff personnel without the approval of the state department; but the state department shall have the authority to request the county board to dismiss any member of the staff personnel for inefficiency, incompetence or similar cause.

Public assistance staff personnel attached to the county board shall be paid from state public welfare funds, both their salaries and their actual and necessary traveling expenses, and their necessary subsistence expenses when away from the county seat in the performance of their duties; but the county board of public welfare shall reimburse the state department of public welfare, from county poor funds, one-half of the payments so made

to its public assistance staff personnel. All other administrative costs of the county department shall also be paid from county poor funds.

On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the state department of public welfare shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make such reimbursements within twenty (20) days after the presentation of the claim and the state department shall credit (add) all such reimbursements to its account for administrative costs.

History: En. Subd. (b), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 5, Ch. 129, L. 1939.

Collateral References
Paupers € 5, 6.
70 C.J.S. Paupers §§ 7, 10.

#### References

State ex rel. Broadwater County v. Potter, 107 M 284, 286, 84 P 2d 796.

71-218. Field supervisors—functions. County departments shall be under the supervision of such field supervisors and subject to audit by such field auditors as may be appointed for this purpose by the state department. Such field supervisors shall be direct representatives of the state department in maintaining personal contact, supervision and advisory services between the state department and the county department, and such field auditors shall likewise be direct representatives of the state department in maintaining personal contact between the state department and the county department.

History: En. Subd. (c), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 6, Ch. 129, L. 1939.

Collateral References
Paupers©=3, 8.
70 C.J.S. Paupers §§ 3, 11 et seq.

71-219. Grants-in-aid based on need and after investigation. Subject to review by the county board the staff of the county department shall determine grants and changes in grants, based on the needs of each applicant, after investigation in accordance with the rules and regulations and standards of assistance prescribed by the state department. In determining the amount of grants, casual, periodic or occasional income shall not be deducted from the grant, nor shall such income render a recipient incligible for assistance, unless such income equals or exceeds the monthly assistance grant of the recipient.

History: En. Subd. (d), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 7, Ch. 129, L. 1939; amd. Sec. 1, Ch. 98, L. 1951.

71-220. Reports to state board. The county board shall be required to submit to the state department such monthly, quarterly or yearly reports as the state board may require in respect to county public assistance activities, county welfare or poor funds, and such state funds as are granted to the county for assistance purposes.

History: En. Subd. (e), Sec. 10, Part 1, Ch. 82, L. 1937.

71-221. Functions and activities of the county department. The county department of public welfare shall be charged with the local administra-

tion of all forms of public assistance and welfare operations in the county except that all such local administration must conform to federal and state law and the rules and regulations as established by the state department.

History: En. Subd. (a), Sec. 11, Part 1, Ch. 82, L. 1937; amd. Sec. 5, Ch. 199, L. 1951.

When Adoption Requires Consent of Department

Where department of public welfare to which court awarded minor children on ground that the children were dependent and neglected refused to give its consent to adoption of children court could not make an adoption order since the department was in loco parentis to the children. State ex rel. Frederick v. District Court, 119 M 143, 173 P 2d 626, 628.

#### References

State ex rel. Wilson v. Weir, 106 M 526, 530, 79 P 2d 305.

71-222. Per capita and millage taxes to be levied—expenditures—budgets. It is hereby made the duty of the board of county commissioners in each county to levy the per capita tax of two dollars (\$2.00), and the six (6) mills for the county poor fund as provided by law, or so much thereof as may be necessary. The board shall budget and expend so much of the funds in the county poor fund for all purposes of this act as will enable the county welfare department to pay the general relief activities of the county and to reimburse the state department of public welfare for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and its proportionate share of any other welfare activity that may be carried on jointly by the state and the county.

The amounts set up in the budget for the reimbursements to the state department shall be sufficient to make all of these reimbursements in full. The budget shall make separate provision for each one of these public assistance activities, and proper accounts shall be established for the funds for each and all of such activities.

As soon as the preliminary budget provided for in section 16-1903 has been agreed upon, a copy thereof shall without delay be mailed to the state administrator of public welfare, and it shall be his duty, at any time before the final adoption of the budget, to make such recommendations with regard to changes in any part of the budget relating to the county poor fund as is deemed necessary in order to enable the county to discharge its obligations under the Public Welfare Act.

The state administrator shall promptly examine the preliminary budget so submitted to him in order to ascertain if the amounts provided for reimbursements to the state department are likely to be sufficient, and shall notify the county clerk of his findings. It is hereby made the duty of the board to make such changes in the amounts provided for reimbursements, if any are required, that the county will be able to make the reimbursements in full.

The board of county commissioners shall not have the right to make any transfer from the amounts budgeted for reimbursing the state department without having first obtained a statement in writing from the state administrator of public welfare to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

No part of the county poor fund, irrespective of the source of any part thereof, shall be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance, or its proportionate share of any other welfare activity that may be carried on jointly by the state and the county.

History: En. Subd. (b), Sec. 11, Part 1, Ch. 82, L. 1937; amd. Sec. 8, Ch. 129, L. 1939; amd. Sec. 3, Ch. 117, L. 1941; amd. Sec. 6, Ch. 199, L. 1951.

# Anticipation Warrants Required to Secure Aid

Before a county may secure aid from the state welfare board for relief purposes, it must issue warrants in anticipation of the revenues derived from the six-mill levy authorized by this section, in accordance with the budget, and such additional emergency warrants which may be freely converted into cash without discount. State ex rel. Silver Bow County v. Brandjord, 107 M 231, 235, 82 P 2d 589.

# Interest on Warrants from Poor Fund Lawful

Payment of interest on registered warrants drawn against the county poor fund is a lawful expenditure from such fund. State ex rel. Silver Bow County v. Brandjord, 107 M 231, 238, 82 P 2d 589.

## Not Coercion or Duress by Legislature

The provision of this section requiring county commissioners to levy a six-mill levy for the poor fund in order that their county might place itself in line to receive aid from the state in caring for its poor, held not an exercise of coercion or duress on the part of the legislature. State ex rel. Wilson v. Weir, 106 M 526, 534, 79 P 2d 305.

# Where County Budgets So as to Throw Burden on State

If a county, in making a six-mill levy authorized by this section budgets excessive appropriations so as to cast the whole burden of general relief on the state department, the latter may compel such excesses to be transferred to the poor fund for general relief before extending aid to the county. State ex rel. Silver Bow County v. Brandjord, 107 M 231, 238, 82 P 2d 589.

#### Collateral References

Paupers \$\infty 10, 11.
70 C.J.S. Paupers \$\§ 18, 19.

71-223. Right of appeal. If an application for assistance under this act is not acted upon by the county welfare board promptly or if a decision is made with which the applicant or recipient is not satisfied, he may appeal to the state board of public welfare for a fair hearing by addressing a request for the same to the state department of public welfare. The state board shall, upon receipt of such an appeal, give the applicant or recipient and the county welfare board prompt notice and opportunity for a fair hearing. The state board shall prescribe the manner and form in which appeals shall be made and shall adopt such rules and regulations as are necessary for prompt holding of fair hearings. The county welfare board shall be represented at such hearing.

The state board may also, upon its own motion, review any decision of a county welfare board, and may consider any application upon which a decision has not been made by the county board within a reasonable time from the filing thereof. The state board may cause such additional investigation to be made as it may deem necessary, and shall make such decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this act.

In the case of the state board reviewing a county decision on its own motion, applicants or recipients affected by such decisions of the state

board shall, upon request be given reasonable notice and opportunity for a fair hearing by the state board.

All decisions of the state board shall be final and shall be binding upon the county involved and shall be complied with by the county department.

History: En. Sec. 12, Part 1, Ch. 82, L. 1937; amd. Sec. 7, Ch. 199, L. 1951; amd. Sec. 1, Ch. 24, L. 1953.

# When Writ of Mandate to Compel Grant May Not Issue

When there is an issue between the state and county departments as to the number of applicants entitled to relief and the amount to which they are entitled, the supreme court may not issue a writ of mandate to compel the state department to make a grant of state relief funds to a county under this section, in view of

the discretionary powers and the right of review granted the state department of decision of the county department. State ex rel. Silver Bow County v. Brandjord, 107 M 231, 233, 82 P 2d 589.

#### References

State ex rel. Williams v. Kamp, 106 M 444, 452, 78 P 2d 585; State ex rel. Wilson v. Weir, 106 M 526, 531, 79 P 2d 305.

#### Collateral References

Paupers € 42. 70 C.J.S. Paupers § 70.

71-224. Right to hold property. The state board shall have power to acquire by purchase, exchange, or gift, on such terms and conditions and in such manner as it may deem proper, and to acquire by condemnation in accordance with and subject to the provisions of any and all existing laws applicable to the condemnation of property for public use, and land, rights, easements, and other property, either real or personal, necessary or proper to carry out the purposes set forth in this act. Title to property purchased, or condemned, or acquired in whatever manner, shall be taken in the name of the state of Montana for the use and benefit of the state department.

History: En. Sec. 13, Part 1, Ch. 82, L. 1937.

### Collateral References

Eminent Domain 27; States 55. 29 C.J.S. Eminent Domain § 64; 81 C.J.S. States § 104.

71-225. Power to make contracts. The state board is empowered to enter into contracts and leases with the United States of America, its instrumentalities, or its agencies, or any thereof, to carry out any of the purposes set forth in this act and may in such contracts or leases authorize the United States, its instrumentalities or agencies, or any thereof, to exercise such supervision over any property belonging to the state board, or any matter or thing the subject of said contract or lease, as it may be required by the United States, its instrumentalities, or its agencies, or any thereof, until such time as any money expended, advanced or loaned by the said United States, its instrumentalities, or agencies, and agreed to be repaid thereto by the state board shall have been fully repaid. It is the purpose and intent of this act that the state board shall be authorized and empowered to accept co-operation from the United States of America, its instrumentalities and agencies in all matters deemed necessary by the state board to carry out the purposes of this act, and the state board shall have full power to do all things necessary in order to avail itself of such aid, assistance and co-operation under federal legislation heretofore or hereafter enacted by Congress or under any proclamation or order of the executive, or of any executive department or agency, of the United States, now or hereafter promulgated or made.

The state board of public welfare shall not use any state funds, directly or indirectly, for sponsoring projects (except projects for the improvement of property owned or leased by the state department of public welfare), for such undertakings as the grading or improvement of streets, alleys and highways; the building of bridges; the erection, alteration, or repair of public buildings; the improvement of parks or boulevards; irrigation and water conservation projects or similar undertakings. The state board of public welfare shall have no authority whatever to contribute, directly or indirectly, any state funds in any form or manner to projects of this nature except to projects for the improvement of property owned or leased by the state department of public welfare.

History: En. Sec. 14, Part 1, Ch. 82, L. 1937; amd. Sec. 9, Ch. 129, L. 1939.

#### References

State ex rel. Browning v. Brandjord, 106 M 395, 402, 81 P 2d 677; State ex rel. Dean v. Brandjord, 108 M 447, 459, 92 P 2d 273.

Judicial questions regarding Federal Social Security Act and state legislation adopted in anticipation of or after the passage of that act, to set up "state plan" contemplated by it. 100 ALR 697; 106 ALR 243; 108 ALR 613; 109 ALR 1346; 118 ALR 1220 and 121 ALR 1002.

## Collateral References

Paupers \$3; States \$93, 119.
70 C.J.S. Paupers § 3; 81 C.J.S. States §§ 113, 133.

71-226. Fraudulent acts. Whoever knowingly obtains, or attempts to obtain, or aids, or abets any person to obtain by means of willfully false statement or representation or by impersonation, or other fraudulent device, public assistance to which he is not entitled, assistance greater than that to which he is justly entitled; or whoever aids or abets in buying or in any way disposing of the property, either personal or real, of a recipient of assistance without the consent of the county department and with the intent to defeat the purposes of this act, shall be guilty of a misdemeanor. In assessing the penalty the court shall take into consideration, among other factors, the amount of money fraudulently received.

History: En. Sec. 15, Part 1, Ch. 82, L. 1937.

### Collateral References

Fraud \$\infty\$68. 2 C.J.S. Agency \ 10; 37 C.J.S. Fraud \ 154.

71-227. Approval or denial of applications. Approved or denied applications for assistance under this act shall be signed by the chairman and one other member of the county board. In the event that the state board may require all such actions to be reviewed and receive the final approval or disapproval of the state department, the state board shall designate certain executive officers of the state department who shall sign such state department approvals or disapprovals.

History: En. Sec. 16, Part 1, Ch. 82, L. 1937.

Collateral References
Paupers 41.
70 C.J.S. Paupers § 69.

71-228. Revocation of assistance. If at any time the county or state departments have reason to believe, by reason of a complaint or otherwise,

that public assistance under this act has been improperly granted, it shall cause an investigation to be made. If it appears as a result of any such investigation that the assistance was improperly granted, the state department shall notify the county department that no further payments shall be authorized for such recipient. The right of appeal is granted recipients whose assistance has been revoked.

History: En. Sec. 17, Part 1, Ch. 82, L. 1937.

71-229. Assistance not assignable nor subject to legal process. Assistance granted under this act shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this act shall be subject to execution, levy, attachment, garnishment or other legal process, or to the operation of any bankruptcy or insolvency law.

History: En. Sec. 18, Part 1, Ch. 82, L. 1937.

- 71-230. Method of issuing assistance grants—reimbursement. (a) Checks in payment of public assistance, as provided for in each part of this act, with the exception of general relief, and with the exception of old age assistance, aid to dependent children, aid to needy blind, and aid to the permanently and totally disabled payments made in behalf of such recipients for medical care shall be issued by the state department upon approved certificates of award and reports of changes of such eligible grantees as are forwarded by the county department to the state department and all such checks will be mailed to the individual recipient. The checks in payment of public assistance shall be issued in the full approved amount for each eligible approved grantee and the original monthly payment shall be from the state public welfare accounts. All public assistance checks shall represent cash on demand at full par value to the recipient.
- (b) On or before the twentieth of each month the state department will present a claim for reimbursement to each county department for its proportionate share of public assistance granted in the county during the month. The county department must make such reimbursement to the state department within twenty (20) days after such claim is presented.
- (c) Warrants or checks shall be issued from the poor fund of the county in payment of medical care provided in behalf of eligible recipients of old age assistance, aid to dependent children, aid to needy blind, and aid to the permanently and totally disabled. The warrants or checks shall be identified to the category of assistance under which issued.

History: En. Sec. 19, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 71, L. 1957.

Collateral References
Paupers 52.
70 C.J.S. Paupers § 79.

71-231. Records and reports. Each county department shall keep such records and make such reports and in such detail as the state department may from time to time require, and shall transmit to the state department upon its request copies of applications and any or all other records pertaining to any case. The state department is hereby authorized and directed

to keep such records, in such form and containing such information, as the federal social security board may from time to time require, and comply with such provisions as the federal board may from time to time find necessary to assure the correctness and verification of such reports.

History: En. Sec. 20, Part 1, Ch. 82, L. 1937; amd. Sec. 10, Ch. 129, L. 1939.

Collateral References
Paupers \$\infty 7.
70 C.J.S. Paupers \$ 11 et seq.

71-231.1. Filing of records showing recipients of public assistance—public records—destruction after four years. The county welfare board of each county shall on or before the thirtieth (30th) day of January, April, July and October of each year file with the county clerk and recorder of each county a complete report showing the names of all recipients receiving public assistance, together with the amounts paid to each during the preceding quarter.

The reports so filed with the county clerk and recorder shall be and the same hereby are declared to be public records and shall be open to public inspection at all times during the regular office hours of said county clerk and recorder. The reports so filed may be destroyed by the county clerk and recorder in the presence of the board of county commissioners and upon order of said board of county commissioners at any time after the period of four (4) years from their filing date.

History: En. Sec. 1, Ch. 179, L. 1953.

71-231.2. Misuse of public assistance information. Except as provided in this act, it shall be unlawful for any person, body, association, firm, corporation or other agency to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any lists or names for commercial or political purposes of any nature, or for any purpose not directly connected with the administration of public assistance.

History: En. Sec. 2, Ch. 179, L. 1953.

71-231.3. Penalty. Any person, body, association, corporation, firm, or other agency who shall willfully or knowingly violate any provision of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five (\$25.00) dollars nor more than one thousand (\$1,000.00) dollars, to which may be added imprisonment in the county jail for any determinate period not to exceed sixty (60) days. If the violation is by other than an individual, the imprisonment may be adjusted against any officer, agent, employee, servant, or other person of the association, corporation, firm or other agency who committed or participated in such violation and is found guilty thereof.

History: En. Sec. 3, Ch. 179, L. 1953.

71-232. Limitations of act. All assistance granted under this act shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be passed, and no recipient

shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by such amending or repealing act.

History: En. Sec. 21, Part 1, Ch. 82, L. 1937.

71-233. Prerequisite to eligibility of applicant, investigation of financial condition of applicant's relatives—report to state department of public welfare. Each county public welfare department acting directly or through an authorized agent, upon receipt of an application for public assistance, in addition to duties otherwise imposed and acting without unnecessary delay and with diligence, shall investigate the facts relating to the income and financial condition of the applicant's living husband, wife, father, mother, son or daughter or any or all of them, and provided, further, that such investigation shall be a prerequisite to the establishment of eligibility. In making such investigation, the department and its duly authorized agents hereby are authorized to require statements under oath from the applicants and from any such person whose income and financial condition is at issue. A report containing the results of such investigation and recommendations thereon, shall be promptly made to the state department of public welfare.

History: En. Sec. 1, Ch. 180, L. 1953.

71-234. Determination of liability for contribution to applicant's support. The state department of public welfare, upon receipt of the report of the investigation referred to in section 71-233, may make such further investigation of the matter as it may deem necessary to ascertain the facts in relation thereto and shall cause to be made a determination of the liability of each living relative of the applicant referred to herein for contribution to the applicant's support in accordance with the "relatives contribution scale" established by this act. In determining the ability to contribute, the financial circumstances of such relatives shall be given due consideration in the order named, and in unusual cases a contribution of less than the amount fixed in the relatives contribution scale may be authorized by the state department of public welfare upon recommendation contained in the report of the investigation referred to in section 71-233 or any subsequent investigation by either the county or state departments, and provided that such determination of financial circumstances of each such relative investigated shall be fully set forth as part of the case record of the applicant.

History: En. Sec. 2, Ch. 180, L. 1953.

71-235. Living relatives—jointly and severally liable—scale of contribution. The living relatives of each needy person, named in this act, shall be and they hereby are made jointly and severally liable in the order named in section 71-233 to such needy person for the monthly amounts of money determined in accordance with the following scale, to wit:

# RELATIVES CONTRIBUTION SCALE

A. Net monthly income of	B. Number of persons dependent upon income exclusive of applicant									
responsible relatives in	1	2	3	4	5	6	7	8	9	10 and
one family in dollars		C. Maximum required monthly contribution								
Under 195	0	0	0	0	0	0	0	0	0	0
195 to 254	15	0	0	0	0	0	0	0	0	0
255 to 314	30	10	0	0	0	0	0	0	0	0
315 to 394	50	30	20	15	5	0	0	0	0	0
395 to 474	70	50	40	35	25	20	10	0	0	0
475 to 554	90	70	60	55	45	40	30	20	10	0
555 to 654	100	90	80	75	65	60	50	40	30	20
655 to 754	100	100	100	100	90	85	75	65	55	45
755 to 854	100	100	100	100	100	100	100	90	80	70
855 and up	100	100	100	100	100	100	100	100	100	90

For the purposes of this act: (1) A needy person is one who is eligible for public assistance under the laws of this state; (2) "Net monthly income" shall be deemed to mean one-twelfth (1/12) of the difference between the net income for the taxable year as the term net income is defined in section 84-4901, subsection ten (10), and the state income tax paid as determined by the state income tax return filed during the current year.

In those cases where both spouses classify as responsible relatives of needy persons during the same period of time, the liability for contribution of each of said spouses during that time shall be considered to be one-half  $\binom{1}{2}$  of the amount shown in the scale established by this act.

History: En. Sec. 3, Ch. 180, L. 1953.

Collateral References
Paupers \$\infty 37(1).
70 C.J.S. Paupers \§ 60.

71-236. Investigation of relatives' state income tax returns—return prima-facie evidence of income—penalty for disclosing contents of return. The state department of public welfare shall be required and it shall be its duty, when necessary to determine the financial circumstances of those relatives herein named, to secure from the state board of equalization a report of the amount of income set forth on the return required by section 84-4914. The state board of equalization is authorized and it shall be its duty to divulge or make known to the state department of public welfare the amount of income or any particulars set forth or disclosed in any report or return required under the State Income Tax Act, and submitted by the relatives herein named.

A separate income tax return shall constitute prima-facie evidence of taxable income, amount of tax and number of dependents of the individual making it; a joint income tax return of husband and wife shall constitute prima-facie evidence of taxable income, amount of tax and number of dependents of either spouse, for the purposes of this act.

It shall be unlawful for the board or any deputy, assistant, agent, clerk or other officer or employee to divulge or make known in any manner any information secured from the state board of equalization in the administration of this act, except for purposes directly connected with the administration of this act. Violation of the provisions of this section shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding one (1) year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of one (1) year, thereafter.

History: En. Sec. 4, Ch. 180, L. 1953.

71-237. Effect of liability of relative on granting or continuing assistance to a recipient. The liability of a relative to contribute to the support of a recipient of public assistance established by this act shall not be grounds for denying or discontinuing public assistance to any person; provided, however, that by accepting such public assistance the recipient thereof shall be deemed to consent to the recovery of an amount equal to the liability as set forth in section 71-235 from any responsible living relative or relatives by the state public welfare department as in this act provided.

History: En. Sec. 5, Ch. 180, L. 1953.

71-238. Right of action against relatives for contribution. From and after the effective date of this act each needy person in Montana shall have a cause of action at law against any living relative or relatives referred to in section 71-233 for the monthly contribution to his or her support established by section 71-235; in any such action at law judgment may be entered for all accumulated contributions for which defendant is liable under this act.

History: En. Sec. 6, Ch. 180, L. 1953.

71-239. State department subrogated to recipient's cause of action against relatives. The state department of public welfare shall be subrogated to the right of each needy person who is a recipient of public assistance in this state, to prosecute an action at law arising under the provisions of this act against any living relative of such recipient named in section 71-233.

History: En. Sec. 7, Ch. 180, L. 1953.

71-240. Commencement of action—disbursement of funds collected. The state department of public welfare shall be and is hereby authorized, either in its own name or in the name of the recipient of public assistance to whose right of action it has been subrogated, to commence and prosecute to final conclusion such legal proceedings as may be deemed necessary for the amount of the relatives' required contribution as determined under this act. From the amount collected as a result of such legal proceedings, the state department of public welfare shall deduct the full amount previously paid as public assistance under the laws of this state and the remainder thereof, after deducting the costs of the proceeding, shall be delivered to the recipient. The amount of any previously paid public assist-

ance recovered in any such proceedings shall be distributed by the state department of public welfare to the United States government, the county, and to the state general fund, as their interests may appear. The attorney general shall at the request of the state board of public welfare prosecute any and all actions instituted under this act, and is hereby authorized to instruct the county attorneys of the counties in which such actions may arise, to prosecute the same.

History: En. Sec. 8, Ch. 180, L. 1953.

71-241. Agreement for lien on real property of recipient of public assistance other than recipients of general relief or aid to dependent children. No application for a public assistance grant except applications made pursuant to chapter 5, Title 71, Revised Codes of Montana, 1947 (aid to dependent children), and chapter 3, Title 71, Revised Codes of Montana, 1947 (general relief), shall be approved unless the applicant shall execute and deliver with such application an agreement, in such form as the state board of public welfare shall prescribe, acknowledging and agreeing that the amount of all assistance thereafter paid to the applicant, from whatever source such assistance may be derived, shall constitute an obligation and indebtedness of the applicant to the state and county which shall be secured by a lien upon all real property of the applicant then owned or acquired while a recipient of such assistance.

History: En. Sec. 1, Ch. 228, L. 1953.

71-242. Award of public assistance—ineligibility upon transfer of property, when. Upon completion of the investigation, the county board shall determine whether the applicant is eligible for public assistance under the provisions of this act, the type and amount of public assistance he shall receive, and the date upon which such public assistance shall begin. Public assistance shall not be granted under the Montana State Welfare Act to any person who has deprived himself directly or indirectly of any property for the purpose of qualifying for assistance under this act. Any person who shall have transferred or shall transfer real property or interests in real property within five (5) years of the date of application for public assistance without receiving adequate consideration therefor in money or money's worth shall be presumed to have made such transfer for the purpose of qualifying for assistance under this act.

History: En. Sec. 2, Ch. 228, L. 1953.

71-243. Filing of lien—indexing—priority. Immediately after the making of any award of public assistance the county department of public welfare shall cause to be filed in the office of the county clerk and recorder of the county wherein the recipient of such award is residing, and in the office of the county clerk and recorder of any other county wherein real property owned by the recipient is situated, a certificate, in such form [as] shall be prescribed by the state board, including a statement of the name and residence of the recipient, the amount of assistance, and the date on which the assistance shall begin. Said certificate shall be filed by the county clerk and recorder as a lien against the real property of the recipi-

ent therein named, and shall be indexed in the same manner as real estate mortgages, and from and after the filing of said certificate all grantees, encumbrances and attaching creditors of any real property owned by such recipient shall be deemed to have constructive notice thereof, and said certificate shall create a general lien upon all real property of the recipient to secure the repayment of the entire amount of all assistance thereafter paid to such recipient, which lien shall be prior and superior in right to all liens, encumbrances or conveyances affecting said real property which may be thereafter filed or recorded.

History: En. Sec. 3, Ch. 228, L. 1953.

Compiler's Note

The bracketed word "as" was inserted by the compiler.

71-244. Foreclosure of lien. No foreclosure of any such lien affecting property occupied as a home by the recipient or his or her spouse, or his or her dependent, shall be instituted during the lifetime of the recipient except upon a finding and determination by the county department of public welfare, subject to review by the state board, that the assistance awarded to such recipient was obtained by fraud, or except upon a conveyance of such property by the recipient.

Said lien may be foreclosed in the manner provided by law for the enforcement of mechanic's liens upon real property in the district court of the county wherein the certificate hereinbefore provided for has been filed, and the decree for the enforcement thereof shall provide for the sale of the real property of the recipient, or so much thereof as may be necessary to satisfy said lien, and said sale shall be conducted by the sheriff in the manner provided by law for the sale of real property under execution. Suits for the foreclosure of such lien shall be brought in the name of the county for the benefit of itself and the state board of public welfare.

History: En. Sec. 4, Ch. 228, L. 1953.

71-245. Release or partial release of lien, when. Whenever the obligation secured by said lien shall have been paid, or shall have been discharged by settlement, the state board of public welfare shall not later than 30 days after receipt of payment cause a release and satisfaction thereof to be entered in the office of the county clerk and recorder of the county wherein such lien is filed. The state board is further empowered to cause a partial release of such lien to be entered with respect to any portion or portions of the real estate of the recipient.

History: En. Sec. 5, Ch. 228, L. 1953.

71-246. Lien to attach to all recipients after July 1, 1953—suspension of assistance to recipients who fail to agree to lien. The lien hereinbefore provided for shall attach to the real property of all persons who receive public assistance from and after the 1st day of July, 1953. Not less than sixty (60) days prior to said date each county department of public welfare in this state shall mail or deliver to all recipients of public assistance within said county a form of the agreement provided for in section 71-241, together with a summary of the provisions of this act and a notice that all recipients are required, as a condition precedent to the continuance of pub-

lic assistance awards, to execute and return such agreement to said county department prior to July 1, 1953; and payments of assistance shall be suspended as to all recipients who fail or neglect to execute and return said agreements within said period, unless the state board of public welfare finds that circumstances make such return within the specified time impracticable.

History: En. Sec. 6, Ch. 228, L. 1953.

71-247. Recovery from the estate of a decedent—claim for assistance paid. Upon the death of any recipient of public assistance other than aid to dependent children, or general relief, the state department of public welfare shall execute and present a claim against the estate of such person within the time specified in the published notice to creditors in the estate matter for the total amount of assistance paid under this act, separately stating therein the amount of all assistance paid from and after the 1st day of July, 1953, which is secured by the lien herein provided for. Said claim shall be a preferred claim having the preference specified by subdivision 4, section 91-3601.

No claim hereunder shall be enforced against any real estate of a recipient while it is occupied by the surviving spouse, or dependent, as a home, but the lien provided for by this act shall, until paid, continue in full force as against the real estate of such recipients notwithstanding postponement of enforcement thereof by reason of such occupancy of the surviving spouse or dependent.

The state board of public welfare shall not assert its lien or claim during the lifetime and continued occupancy of said real estate by the surviving spouse or dependent unless other claimants or persons shall have instituted proceedings for the probate of the estate of the deceased recipient, in which case the board shall file its claim hereunder.

History: En. Sec. 7, Ch. 228, L. 1953.

71-248. Lien not to sever a joint tenancy or affect the right of survivorship. The lien herein provided for shall not sever a joint tenancy or affect the right of survivorship except that said lien shall be enforceable to the extent that the recipient had an interest prior to decease.

History: En. Sec. 8, Ch. 228, L. 1953.

71-249. Prevention of exploitation of recipients. In the administration of this act, the state board shall safeguard the interests of recipients of public assistance, to the end that their property shall not be exploited nor pass from their possession without adequate consideration.

History: En. Sec. 9, Ch. 228, L. 1953.

71-250. Disposition of sums recovered. All sums recovered hereunder from any source shall be distributed to the county and to the general fund of the state of Montana as their interests may appear; and if the federal law so requires, the federal government shall be entitled to a share of any amounts collected hereunder in proportion to the amounts which it has contributed to the grants recovered, and the amount due the United

States shall be promptly paid by the state board to the United States government.

History: En. Sec. 10, Ch. 228, L. 1953.

# CHAPTER 3

PUBLIC WELFARE ACT PART 2—GENERAL RELIEF—TO PROVIDE AID TO THE UNEMPLOYABLE, DESTITUTE AND THOSE MADE DESTITUTE THROUGH LACK OF EMPLOYMENT AND ALL THOSE IN NEED OF PUBLIC ASSISTANCE NOT ELIGIBLE OR OTHERWISE CARED FOR UNDER OTHER PARTS OF THIS ACT

Section 71-301. Administration.

71-302. Eligibility requirements for general relief.

71-303. Eligibility for relief—investigation of resources.

71-304. Status of aliens and interstate transients—other conditions.

71-305. Equal consideration.

71-306. Right of appeal and hearing.

71-307. Relief by check or disbursing orders. 71-308. Medical aid and hospitalization.

71-309. Primary obligations of the board of county commissioners.

71-310. Certification for relief employment. 71-311. Grants from state funds to counties.

71-312. Application for relief.

71-313. Investigations of relief applications.

71-314. Granting of assistance.

71-301. Administration. The state department and county departments of public welfare are hereby authorized and charged with the administration and supervision of general relief under the powers, duties and functions as prescribed in Part I of this act.

History: En. Sec. 1, Part 2, Ch. 82, L. 1937.

136 M 283, 347 P 2d 727. (Dissenting opinion, 136 M 283, 347 P 2d 727, 740, 746.)

### Assistance to Striking Union Members

Mandamus could be used to compel the department of public welfare to rescind a general order providing that striking members of a union were to receive less general relief assistance than other general relief recipients, and to require the department to give union members the same general relief as given other applicants in the same class. State ex rel. International Union of Mine, Mill & Smelter Workers v. Montana State Dept. of Public Welfare,

#### References

State ex rel. Frederick v. District Court, 119 M 143, 173 P 2d 626, 628.

#### Law Review

Administrative agencies—department of public welfare—discrimination against welfare recipients because of source of unemployment [State ex rel. Int. Union v. Montana State Dept. of Public Welfare, 136 M 283, 347 P 2d 727], 21 Mont. L. Rev. 222 (Spring 1960).

71-302. Eligibility requirements for general relief. An applicant to be eligible for general relief must have resided in the state of Montana for at least one (1) year immediately prior to the date of receipt of this assistance. Any person otherwise qualified who has resided in a county for one (1) year shall thereby acquire residence in that county, which residence shall be retained until residence is acquired in another county by residing there for one (1) year. If a person has resided in the state for one (1) year but does not have county residence, he shall make application for this assistance in the county in which he is residing, which county shall bear the cost of his assistance until he has acquired a county residence. If a

person is absent from the state voluntarily he shall thereby be ineligible for general relief in the state of Montana.

History: En. Subd. (a), Sec. 2, Part 2, Ch. 82, L. 1937; amd. Sec. 11, Ch. 129, L. 1939; amd. Sec. 4, Ch. 117, L. 1941; amd. Sec. 1, Ch. 156, L. 1951.

#### Collateral References

Constitutionality of poor relief law, as affected by requirement as to period of residence as condition of relief. 132 ALR 518

71-303. Eligibility for relief—investigation of resources. An applicant for assistance including medical care and hospitalization shall be eligible to receive assistance only after investigation by the county department reveals that the income and resources are insufficient to provide the necessities of life, and assistance shall be provided to meet a minimum subsistence compatible with decency and health.

History: En. Subd. (b), Sec. 2, Part 2, Ch. 82, L. 1937; amd. Sec. 12, Ch. 129, L. 1939.

#### References

State ex rel. International Union of Mine, Mill & Smelter Workers v. Montana State Dept. of Public Welfare, 136 M 283, 347 P 2d 727.

71-304. Status of aliens and interstate transients—other conditions. Aliens found to be illegally within the United States shall not be eligible for relief from state funds.

Interstate transients, without legal Montana residence, shall not be eligible for continued assistance from state funds but may, if in distress, receive temporary relief from either state or county funds until such time as such transients may be returned to their state of legal residence or state or [of] origin. If transient families are stranded and without means of return, their transportation may be paid from state funds.

An applicant must not be in need of continued care in a public institution because of physical or mental condition.

Individuals receiving assistance under other parts of this act shall not receive supplementary cash assistance from state relief funds.

History: En. Subd. (c) to (f), Sec. 2, Part 2, Ch. 82, L. 1937.

#### Compiler's Note

The bracketed word "of" was inserted by the compiler.

### Operation and Effect

Where an indigent nonresident is injured within county and requires immediate medical and surgical attention and hospitalization and is removed to another county to obtain such treatment the county in which the injury occurred is liable. Musselshell County v. Petroleum County, 118 M 1, 161 P 2d 905, 908.

71-305. Equal consideration. Persons eligible for and in need of relief shall be, whether employable or unemployable, given equal consideration for public assistance as those persons eligible for assistance under other parts of this act.

History: En. Sec. 3, Part 2, Ch. 82, L. 1937.

### Assistance to Striking Union Members

Mandamus could be used to compel the department of public welfare to rescind a general order providing that striking members of a union were to receive less general relief assistance than other gen-

eral relief recipients, and to require the department to give union members the same general relief as given other applicants in the same class. State ex rel. International Union of Mine, Mill & Smelter Workers v. Montana State Dept. of Public Welfare, 136 M 283, 347 P 2d 727. (Dissenting opinion, 136 M 283, 347 P 2d 727, 740, 746.)

71-306. Right of appeal and hearing. If an application for assistance under this chapter is not acted upon by the county welfare board promptly or if a decision is made with which the applicant or recipient is not satisfied, he may appeal to the state department for a fair hearing. The state department shall, upon receipt of such an appeal, give the applicant or recipient prompt notice and opportunity for a fair hearing. Individuals or committees with complaints or grievances shall have the opportunity to present their complaints or grievances to either the county board or the state department and it shall be required that due consideration shall be given all proven facts presented by such individuals or committees and the county board or the state department shall be required to relieve such situations, if not otherwise prohibited by law and to the extent of funds available.

History: En. Sec. 4, Part 2, Ch. 82, L. 1937; amd. Sec. 8, Ch. 199, L. 1951.

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State ex rel. Wilson v. Weir, 106 M 526, 532, 79 P 2d 305; State ex rel. International Union of Mine, Mill & Smelter

Workers v. Montana State Dept. of Public Welfare, 136 M 283, 347 P 2d 727.

#### Collateral References

Paupers \$42. 70 C.J.S. Paupers \$70 et seq.

71-307. Relief by check or disbursing orders. All relief disbursements by county departments of public welfare shall be by warrant or check; provided, however, that if the county welfare department finds that a recipient is in the habit of dissipating relief allowances instead of using them for the purposes intended, or that for any other reason it is better for the recipient and his family to receive the allowance through disbursing orders, then disbursing orders shall be used instead of cash payments; but all such disbursing orders must be written in such form that the goods and merchandise to be provided may be furnished by any regular dealer in such goods and merchandise within the county. It is further provided, however, that if the county has work available which an applicant for general relief is capable of performing, then the county department of public welfare may require the applicant to perform such work at the prevailing rate of wages to be paid from the county poor fund in place of granting him general relief.

History: En. Sec. 5, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 129, L. 1939.

#### Appeal from County to State Board

Exercise of the right of appeal from the action of a county body to a state body, as from a county to the state public welfare board, is not always a condition precedent to the right to resort to the courts for relief, as where county board wrongfully refused to issue a check to applicant, in which case appeal to state board would have been without object or purpose under the act. State ex rel. Wilson v. Weir, 106 M 526, 531, 79 P 2d 305.

# Relief Warrants Must Be Readily Convertible into Cash

The provision in this section that relief disbursements shall be by warrant or check

representing cash on demand, held to mean warrants or checks which are the equivalent of cash, i.e., readily convertible into cash without discount. State ex rel. Silver Bow County v. Brandjord, 107 M 231, 235, 82 P 2d 589.

# Where Sending to Poor Farm Violation of Duty

Where a county board approved an application for relief under the Public Welfare Act, placed applicant in a county poor farm instead of issuing to him a warrant or check representing cash on demand as required by this section, it violated a clear legal duty, enforceable by the writ of mandate. State ex rel. Wilson v. Weir, 106 M 526, 529, 79 P 2d 305.

71-308. Medical aid and hospitalization. Medical aid and hospitalization for persons unable to provide such necessities for themselves are hereby declared to be the legal and financial duty and responsibility of the board of county commissioners, payable from the county poor fund. It shall be the duty of the board of county commissioners to make provisions for competent and skilled medical or surgical services as approved by the state board of health or the state medical association, or in the case of osteopathic practitioners by the state osteopathic association or chiropractors by the state chiropractic association, or optometrical services as approved by the Montana optometric association, and dental services as approved by the dental association. "Medical" or "medicine" as used in this act refers to the healing art as practiced by licensed practitioners.

In automobile accident cases wherein transients traveling through the state of Montana are injured, medical aid and hospitalization shall be paid for by the county wherein the accident occurred and the department of public welfare shall reimburse such county in full upon proper claim being made to the department of public welfare; provided, further, that in all other accident cases wherein such transients are injured, medical aid and hospitalization shall be paid for by the county wherein the accident occurred and the department of public welfare shall reimburse such county for one-half of such medical aid and hospitalization paid by such county, upon proper claim being made to the department of public welfare.

The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by the physicians appointed by such board who shall be known as county physicians or deputy county physicians, and may fix a rate of compensation for the furnishing of such medical attendance.

The board of county commissioners shall have the responsibility of making suitable arrangements to provide respectable burial for those for whom such expenses are not otherwise available.

History: En. Sec. 6, Part 2, Ch. 82, L. 1937; amd. Sec. 15, Ch. 129, L. 1939; amd. Sec. 5, Ch. 117, L. 1941; amd. Sec. 1, Ch. 155, L. 1947; amd. Sec. 9, Ch. 199, L. 1951; amd. Sec. 1, Ch. 57, L. 1955; amd. Sec. 1, Ch. 86, L. 1957.

# Burden of Proof

The state, in prosecuting for manslaughter because of defendant's failure to provide medical aid for his wife, after she had been found injured in their home, is not required as an element of their proof to show the ability on behalf of the defendant to furnish such aid. If a defendant could not obtain aid, either through normal procedure or the poor laws, this is a mat-

ter for his defense. State v. Mally, — M —, 366 P 2d 868, 872.

#### References

State ex rel. Williams v. Kamp, 106 M 444, 451, 78 P 2d 585; Musselshell County v. Petroleum County, 118 M 1, 161 P 2d 905, 908.

#### Collateral References

Paupers 48. 70 C.J.S. Paupers 74 et seq.

Liability of governmental agency for emergency medical or surgical services rendered to poor person without its express authority. 93 ALR 900.

71-309. Primary obligations of the board of county commissioners. It is hereby declared to be the primary legal duty and financial obligation of the board of county commissioners to make such tax levies and to establish such budgets in the county poor fund as provided by law and as are necessary to provide adequate institutional care for all such indigent resi-

dents as are in need of institutional care and to make such tax levies and establish such budgets in the county poor fund as are necessary to make provisions for medical aid and services and hospitalization for all indigent county residents. All such public assistance and services shall be charges against and payable from the county poor fund.

History: En. Sec. 7, Part 2, Ch. 82, L. 1937; amd. Sec. 6, Ch. 117, L. 1941; amd. Sec. 10, Ch. 199, L. 1951.

Collateral References
Paupers 10.
70 C.J.S. Paupers §18.

71-310. Certification for relief employment. For such time as the federal government shall require, it shall be the duty and responsibility of the state and the county public welfare department to make all investigations and certifications required by federal employment agencies in respect to the eligibility of employable persons for employment on government emergency work projects.

History: En. Sec. 8, Part 2, Ch. 82, L. 1937.

71-311. Grants from state funds to counties. If the whole of a six (6) mill levy together with the whole of the per capita tax authorized by said section 71-106, and the income to the county poor fund from all other sources shall prove inadequate to pay for the general relief in the county actually necessary and to meet the county's proportionate share of public assistance and its proportionate share of any other welfare activity that may be carried on jointly by the state and the county; and if warrants upon the county poor fund can no longer lawfully be issued to meet these charges; and if the board of county commissioners is unable to declare an emergency for the purpose of providing additional funds or to provide additional funds from any other source; and if the county has in all respects expended the county poor fund only for lawful purposes; and if all of these conditions actually exist in any county of the state, then the state department of public welfare shall, in so far as it has funds available, come to the assistance of such county, in the following manner:

When the county in question has submitted proof to the state board of public welfare through such reports as it may require and through other evidence that may be deemed necessary, that these conditions exist, then the state board may authorize the state administrator to issue a check to the county treasurer of the county for general relief purposes, and the county department of public welfare shall make the disbursements of these state funds for general relief purposes within the county. These grants-in-aid from the state department may be used for any relief activity lawfully conducted by the county, including medical aid, hospitalization and institutional care; but no part thereof may be used, directly or indirectly, to pay for the erection or improvement of any county building or for furniture, fixtures, appliances or equipment for any such building.

Immediately upon receiving notice that such grant-in-aid has been made by the state department, it shall be the duty of the board of county commissioners to adopt an emergency budget in accordance with the provisions of section 16-1907 but without being required to publish any notice of intention to adopt such emergency budget or to hold a hearing thereon. This emergency budget shall appropriate the whole amount of the general relief grant from the state department for the various classes of expenditures from the poor fund for which the grant-in-aid was made by the state department. The money received through such general relief grant from the state department shall be placed in a special poor fund account kept separate and distinct from the poor fund accounts arising under the original poor fund budget, and all expenditures from this special poor fund account shall be made by a separate series of warrants or checks.

History: En. Sec. 9, Part 2, Ch. 82, L. 1937; amd. Sec. 14, Ch. 129, L. 1939; amd. Sec. 7, Ch. 117, L. 1941; amd. Sec. 11, Ch. 199, L. 1951.

State ex rel. Lewis and Clark County v. State Board of Public Welfare, 112 M 380, 383, 117 P 2d 259.

#### References

State ex rel. Silver Bow County v. Brandjord, 107 M 231, 235, 82 P 2d 589;

#### Collateral References

Paupers \$43(4). 70 C.J.S. Paupers § 73 et seq.

71-312. Application for relief. Each applicant for general relief shall make application to the county department of public welfare and the application shall be made in the manner and on the form prescribed by the state department, provided, however, that no application form shall contain what is commonly known as "the pauper's oath." All persons wishing to apply for general relief shall have the opportunity to do so.

History: En. Sec. 10, Part 2, Ch. 82, L. 1937; amd. Sec. 12, Ch. 199, L. 1951.

State Dept. of Public Welfare, 136 M 283, 347 P 2d 727.

#### References

State ex rel. International Union of Mine, Mill & Smelter Workers v. Montana

#### Collateral References

Paupers ≈41. 70 C.J.S. Paupers § 69.

71-313. Investigations of relief applications. Whenever a county public welfare department receives an application for general relief assistance, an investigation shall be promptly made. The investigation of each application for general relief assistance shall be conducted by the county board through a staff worker of the county department. Upon completion of such investigation the county welfare board shall determine whether the applicant is eligible for and should receive a grant, the amount of the grant, and the date on which assistance shall begin. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application.

History: En. Sec. 11, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 199, L. 1951.

71-314. Granting of assistance. The amount of assistance granted any person or family shall be determined by the county board of public welfare according to the rules and regulations and standards of assistance established by the state department.

History: En. Sec. 12, Part 2, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1949; amd. Sec. 14, Ch. 199, L. 1951.

# Collateral References

Paupers \$\sim 41, 43(2).
70 C.J.S. Paupers \$\sim 69. 72.

#### References

State ex rel. Wilson v. Weir, 106 M 526, 529, 79 P 2d 305.

## CHAPTER 4

PUBLIC WELFARE ACT PART 3—TO PROVIDE FOR OLD AGE ASSISTANCE TO AGED PERSONS IN NEED IN CONFORMITY WITH TITLE 2 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED

Section 71-401. Provision for administration. 71-402. Eligibility requirements for old age assistance.

71-403. Amount of assistance.

71-404. Application for assistance. 71-405. County share of participation. 71-406. Investigation of applications.

71-407. Reinstatement of 71-408. Funeral expenses. Reinstatement of recipients of old age assistance, when.

71-409. Assistance may be paid to guardian. 71-410. Subsequent increase of income.

71-411. Periodic review of assistance grants.

Recovery from the estate of a decedent—claim for assistance paid.

71-412. 71-413. Change of residence of person receiving old age assistance.

- 71-401. Provision for administration. (a) The state department of public welfare is hereby authorized and is charged with the general administration and supervision of old age assistance under the powers, duties and functions as prescribed in sections 71-201 to 71-232.
- The county department of public welfare shall be charged with the local administration and supervision of old age assistance, subject to the powers, duties and functions prescribed for the county department in sections 71-201 to 71-232.
- (c) It is hereby mandatory and required that the state plan and operation of old age assistance shall be in effect in each and every county of the state and the administration and supervision of old age assistance shall be uniform throughout the several counties of the state.
- The state department of public welfare shall have printed and distribute copies of this act to all county welfare departments and shall prescribe the form of and print and supply to the county welfare departments blanks of applications, reports and such other forms as may be necessary in relation to old age assistance.
- (e) All rules and regulations of the state department of public welfare made under this act shall be binding upon the county departments of public welfare.
- (f) Definition, old age assistance as used in this chapter means money payments to or payments made for medical care in behalf of aged needy individuals.

History: En. Sec. 1, Part 3, Ch. 82, L. 1937; amd. Sec. 2, Ch. 71, L. 1957.

Aged persons homes, regulation, secs. 69-2401 to 69-2406.

State ex rel. Dean v. Brandjord, 108 M 447, 455, 92 P 2d 273.

# Collateral References

40 Am. Jur. 966, Pensions, § 7; 41 Am. Jur. 679, Poor and Poor Laws, generally;

48 Am. Jur. 511, Social Security, Unemployment Insurance, and Retirement Funds.

Constitutionality of old age pension or assistance acts. 37 ALR 1524; 86 ALR 912 and 101 ALR 1215.

Judicial questions regarding Federal Social Security Act and state legislation adopted in anticipation of or after the passage of that act, to set up "state plan" contemplated by it. 100 ALR 697; 106 ALR 243; 108 ALR 613; 109 ALR 1346; 118 ALR 1220 and 121 ALR 1002. Poor relief from Federal or state funds as affecting rights of applicant for relief or municipalities in that regard. 120 ALR 621.

Exhaustion of administrative remedies as condition of resort to court in respect of right claimed under social security or old age acts. 130 ALR 882.

Construction and application of state social security act as affected by terms of the Federal act or judicial or administrative rulings thereunder. 139 ALR 892.

Right of public to reimbursement from recipient, his estate or relatives, of old age assistance payments. 29 ALR 2d 731.

# 71-402. Eligibility requirements for old age assistance. Old age assistance shall be granted any person who:

- (a) Has attained the age of sixty-five (65);
- (b) Has income which is inadequate to provide a reasonable subsistence compatible with decency and health;
- (c) Has been a resident of the state of Montana for at least five (5) years during the nine (9) years immediately preceding his application for old age assistance;
- (d) Has resided in and been an inhabitant of the state and county in which application is made for at least one (1) year immediately preceding the date of receipt of this assistance. Any person otherwise qualified who has resided in the state for five (5) years or more during the nine (9) years immediately preceding the application, one (1) year of which state residence shall have been immediately prior to the date of receipt of this assistance, and who has no legal county residence, shall file his application in the county in which he is residing, and his assistance shall be paid entirely from state funds until he can qualify as having a legal residence in the said county;
- (e) Is not at the time of receiving assistance an inmate of any public institution, except as a patient in a public medical institution; is not a patient in an institution for the treatment of tuberculosis or mental illness or is not a patient in a medical institution as a result of having been diagnosed as having tuberculosis or psychosis;
- (f) Has not made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this act at any time within two (2) years immediately prior to the filing of application for assistance pursuant to the provisions of this act;
- (g) Is not receiving aid to dependent children, aid to needy blind or aid to the permanently and totally disabled, for himself or herself.

History: En. Sec. 2, Part 3, Ch. 82, L. 1937; Subd. (g) rep. Sec. 9, Ch. 213, L. 1943; amd. Sec. 15, Ch. 199, L. 1951.

#### Collateral References

Paupers 219(7), 43; Social Security and Public Welfare 41.

70 C.J.S. Paupers §§ 32, 72; 81 C.J.S. Social Security and Public Welfare § 17.

Constitutionality of poor relief law, as affected by requirement as to period of residence as condition of relief. 132 ALR 518.

Requisite residence for purpose of old age assistance. 43 ALR 2d 1427.

71-403. Amount of assistance. The amount of old age assistance granted any person shall be determined by the county department of public welfare according to the rules and regulations and standards of assistance established by the state department, as required by the Federal Social Security Act.

History: En. Sec. 3, Part 3, Ch. 82, L. 1937; amd. Sec. 2, Ch. 47, L. 1949; amd. Sec. 16, Ch. 199, L. 1951.

NOTE.—The Federal Social Security Act referred to in this section will be found in the United States Code, Title 42, sec. 301 et seq.

# Does Not Satisfy Constitutional Requirement of an "Appropriation Made by Law"

While Art. V, sec. 34, Constitution provides that no money shall be paid out of the state treasury except upon "appropriations made by law" does not require the introduction of an appropriation bill (salaries fixed by law being an example), and is satisfied if the people have expressed an intention that the money in question be paid, the mere duty of the legislature to make adequate appropriations for what it requires to be done (such as the standard it set up in this section for payment to qualified recipients) does not constitute an appropriation "made by law," any more than a promise of the government to pay money or make an appropriation. State ex rel. Dean v. Brandjord, 108 M 447, 453, 92 P 2d 273.

# Effect of Legislative Appropriation on Grants

Where a recipient of old age assistance applied for writ of mandate to compel payment of the full amount of monthly assistance originally fixed, irrespective of a reduction ordered by the state board because of an insufficient appropriation by the legislature, the writ was denied on the ground that the standard, set up in this section for payment to qualified recipients, does not constitute an appropriation "made by law" in excess of the specific appropriation made by the legislature, hence it is the duty of the state board under the Welfare Act to adopt a policy which will best subserve the cause of assistance within the appropriation furnished it, in its discretion. State ex rel. Dean v. Brandjord, 108 M 447, 455, 461, 92 P 2d 273, distinguished in 114 M 380, 382, 136 P 2d 991.

#### Collateral References

Paupers 43(2); Social Security and Public Welfare 77.

70 C.J.S. Paupers § 72; 81 C.J.S. Social Security and Public Welfare § 25.

71-404. Application for assistance. Application for assistance under this chapter shall be made to the county office of the county department in the county in which the person is residing. The application shall be in the manner and on the form prescribed by the state department of public welfare. All individuals wishing to apply for old age assistance shall have the opportunity to do so.

History: En. Sec. 4, Part 3, Ch. 82, L. 1937; amd. Sec. 1, Ch. 213, L. 1943; amd. Sec. 17, Ch. 199, L. 1951.

71-405. County share of participation. Each county department shall reimburse the state department in the amount of one-third (1/3) of the approved old age assistance grants paid by the state department to persons in the county each month, exclusive of the federal share. Such reimbursements shall be credited to the old age assistance account of the state department.

History: En. Sec. 5, Part 3, Ch. 82, L. 1937; amd. Sec. 1, Ch. 69, L. 1947; amd. Sec. 1, Ch. 155, L. 1949; amd. Sec. 18, Ch. 199, L. 1951; amd. Sec. 3, Ch. 71, L. 1957; amd. Sec. 1, Ch. 5, L. 1961.

#### Collateral References

Paupers 52; Social Security and Public Welfare 91.

70 C.J.S. Paupers § 79; 81 C.J.S. Social Security and Public Welfare § 23.

71-406. Investigation of applications. Whenever a county public welfare department receives an application for an old age assistance grant, an investigation shall be promptly made. The investigation of each applicant for old age assistance shall be conducted by the county board through a staff worker of the county department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of information secured with regard to his circumstances. Upon completion of such inves-

tigation the county welfare board shall determine whether the applicant is eligible for and should receive a grant, the amount of the assistance and the date on which assistance shall begin. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application.

History: En. Sec. 6, Part 3, Ch. 82, L. 1937; amd. Sec. 19, Ch. 199, L. 1951.

71-407. Reinstatement of recipients of old age assistance, when. Any recipient of old age assistance who may be temporarily employed, whose old age assistance has been discontinued because of such employment, shall upon termination of such temporary employment be immediately reinstated on the relief rolls for old age assistance, provided, however, that such recipient is otherwise eligible.

History: En. Sec. 1, Ch. 46, L. 1945.

71-408. Funeral expenses. Upon the death of a person who has been receiving old age assistance, funeral expenses shall be paid by the board of county commissioners from the county poor fund, if the estate of the deceased is insufficient to pay the same. Grants from the old age assistance account are not allowable for funeral expenses.

History: En. Sec. 7, Part 3, Ch. 82, L. 1937.

71-409. Assistance may be paid to guardian. If the person receiving old age assistance is, in the opinion of the county public welfare department, found incapable of taking proper care of himself or his money, the county public welfare board may make the necessary legal arrangements for the appointment of a guardian, and shall then direct that the old age assistance payments be paid to the guardian for the benefit of such irresponsible recipient.

History: En. Sec. 8, Part 3, Ch. 82, L. 1937.

71-410. Subsequent increase of income. If, at any time during the continuance of old age assistance, the recipient thereof or the husband or wife (if living together) of the recipient, becomes possessed of any property or income in excess of the amount enjoyed at the time of the granting of the assistance, it shall be the duty of the recipient immediately to notify the county department of the receipt and possession of such property or income, and the county board may, on inquiry, either cancel the assistance or vary the amount thereof in accordance with circumstances, any excess assistance heretofore paid shall be returned to the state and the county in proportion to the amount of the assistance paid by each respectively, and be recoverable as a debt due the state and the county. Provided however, when federal law or regulations permit that any amounts in a sum not exceeding one hundred dollars (\$100.00) in any one (1) calendar year received by an enrolled member of a recognized Indian tribe as per capita payments or a share in the profits and receipts from tribal lands and interests or tribal enterprises shall not be deemed to be additional property or income under this section.

If the federal law so requires, the federal government shall be entitled to a share of any amounts collected from recipients or their estates in proportion to the amount which it has contributed to the grants recovered, and the amount due the United States shall be promptly paid by the state to the United States government. The remaining portion of the amount collected shall be distributed to the state and county in proportion to the total amount paid by each.

History: En. Sec. 9, Part 3, Ch. 82, L. 1937; amd. Sec. 1, Ch. 46, L. 1949; amd. Sec. 1, Ch. 105, L. 1959.

#### Collateral References

Paupers 43(2); Social Security and Public Welfare 92.
70 C.J.S. Paupers § 72; 81 C.J.S. Social Security and Public Welfare § 18.

71-411. Periodic review of assistance grants. All old age assistance grants made under this act shall be reviewed and reconsidered by the county department as frequently as may be required by the rules and regulations of the state department. After such further investigation as the county board may deem necessary or the state board may require, the amount and manner of giving the assistance may be changed or the assistance may be withdrawn if such authority finds that the recipient's circumstances have changed sufficiently to warrant such action. It shall be within the power of the county board at any time to cancel and revoke assistance for cause, and it may for cause suspend payments for assistance for such periods as it may deem proper, subject to review or final approval by the state department.

History: En. Sec. 10, Part 3, Ch. 82, L. 1937; amd. Sec. 2, Ch. 213, L. 1943.

71-412. Recovery from the estate of a decedent—claim for assistance paid. Upon the death of any recipient of old age assistance, the state board of public welfare shall execute and present a claim against the estate of such person within the time specified in the published notice to creditors in the estate matter for the total amount of assistance paid under this act. No claim shall be enforced against any real estate of a recipient while it is occupied by the surviving spouse, or dependent, as a home.

Every transfer of property made by deed, grant, bargain, sale, or gift by any recipient of old age assistance and recorded subsequent to his having received such assistance shall be presumed to have been made without fair consideration as the term "fair consideration" is defined by section 29-103, and with the intent to defeat the purposes of this section. These presumptions are disputable and may be controverted by competent evidence.

If the federal law so requires, the federal government shall be entitled to a share of any amounts collected from recipients or their estates in proportion to the amount which it has contributed to the grants recovered, and the amount due the United States shall be promptly paid by the state to the United States government. The remaining portion of the amount collected shall be distributed to the state and county in proportion to the total amount paid by each.

History: En. Sec. 11, Part 3, Ch. 82, L. Sec. 1, Ch. 63, L. 1947; amd. Sec. 1, Ch. 1937; amd. Sec. 1, Ch. 178, L. 1943; amd. 234, L. 1953.

#### Collateral References

Paupers 40; Social Security and Public Welfare 92.

70 C.J.S. Paupers § 64; 81 C.J.S. Social Security and Public Welfare § 29.

Right of public to reimbursement from recipient, his estate or relatives, of old age assistance payments. 29 ALR 2d 731.

#### DECISIONS UNDER FORMER LAW

#### Operation and Effect

The state department of public welfare is entitled to share in deceased old age recipient's estate exceeding value of \$500 as shown by inventory and appraisement,

and where such excess is more than sufficient to pay department's claim, it should be allowed and paid in full. In re Bierman's Estate, 118 M 481, 167 P 2d 350, 352.

71-413. Change of residence of person receiving old age assistance. A recipient who moves to another county in this state shall continue to receive assistance, with the approval of the state department; the county from which he has moved shall be charged by the state department for such county share of his assistance for a period of one (1) year after which time the county to which he has moved shall be charged therefor. The state department will determine the date of transfer. The county from which a recipient moves shall notify the state department and the county to which the recipient moves.

History: En. Sec. 12, Part 3, Ch. 82, L. 1937; amd. Sec. 20, Ch. 199, L. 1951.

#### Collateral References

Paupers 21; Social Security and Public Welfare 91.

70 C.J.S. Paupers § 38; 81 C.J.S. Social Security and Public Welfare § 14.

#### CHAPTER 5

PUBLIC WELFARE ACT PART 4—TO PROVIDE FOR AID TO NEEDY DEPENDENT CHILDREN IN CONFORMITY WITH PART 4 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED

Section 71-501. "Dependent child" defined.

71-502. "Aid to dependent children" defined.

71-503. Administration.

71-504. Eligibility for assistance in aid to dependent children.

71-505. Application for assistance.71-506. Investigation of applications.

71-507. Granting of assistance and amount of assistance.

71-508. County share of participation.

71-509. Periodic reconsideration and changes in amount of assistance—appointment of guardian.

71-510. Removal to another county.

71-501. "Dependent child" defined. The term "dependent child" means a child under the age of eighteen (18) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, nephew, niece, or first cousin, in a place of residence maintained by one or more of such relatives as his or their own home.

History: En. Subd. (a) Sec. 1, Part 4, 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. Sec. 4, Ch. 71, L. 1957.

#### Cross-References

Dependent and neglected children, secs. 10-505 to 10-507. Foster home licenses, secs. 10-521 to

10-523.

#### Operation and Effect

Where department of public welfare to which court awarded minor children on ground that the children were dependent and neglected refused to give its consent to adoption of children court could not make an adoption order since the department was in loco parentis to the children. State ex rel. Frederick v. District Court, 119 M 143, 173 P 2d 626, 628.

#### Collateral References

Paupers 43(1); Social Security and Public Welfare \$\infty\$194. 70 C.J.S. Paupers § 72; 81 C.J.S. Social Security and Public Welfare § 63.

"Aid to dependent children" defined. The term "aid to dependent children" means money payments with respect to or payments made for medical care in behalf of a dependent child or dependent children including money payments or payments made for medical care for any month to meet the needs of a relative with whom a dependent child is living if money payments have been made with respect to such child for such month.

History: En. Subd. (b), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 21, Ch. 199, L. 1951; amd. Sec. 5, Ch. 71, L. 1957.

- 71-503. Administration. (a) The state department of public welfare is hereby authorized and is charged with the general administration and supervision of aid to dependent children under the powers, duties and functions as prescribed in sections 71-201 to 71-232.
- The county department of public welfare shall be charged with the local administration and supervision of aid to dependent children, subject to the powers, duties and functions prescribed for the county department in sections 71-201 to 71-232.
- It is hereby mandatory and required that the state plan and operation of aid to dependent children shall be in effect in each and every county of the state and the administration and supervision of aid to dependent children shall be uniform throughout the several counties of the state.
- The state department of public welfare shall have printed and distribute copies of this act to all county welfare departments and shall prescribe the form of and print and supply to the county welfare department blanks of applications, reports and such other forms as may be necessary in relation to aid to dependent children.
- All rules and regulations of the state department of public welfare made under this act shall be binding upon the county departments of public welfare. The state board of public welfare shall make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of this chapter.
- The state department shall co-operate with the federal government in matters of mutual concern pertaining to assistance to dependent children, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance.
- The state department shall make such reports in such form and containing such information as the federal government may from time to

time require, and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports.

- The state department shall publish an annual report and such interim reports as may be necessary or required.
- The county department of public welfare shall administer the provisions of this chapter in the respective counties subject to the rules and regulations prescribed by the state department pursuant to the provisions of this chapter.
- The county department of public welfare shall give prompt notice to appropriate law enforcement officials of the furnishing of aid to dependent children to a child who has been deserted or abandoned by a parent.

History: En. Sec. 2. Part 4. Ch. 82. L. 1937; amd. Sec. 1, Ch. 156, L. 1951.

- 71-504. Eligibility for assistance in aid to dependent children. Assistance shall be granted under this chapter to any dependent child—as defined in section 71-501—who:
  - Is in need of such assistance. (a)
- (b) Has resided in the state for one (1) year immediately prior to the date of receipt of this assistance or who was born within such year. A relative whose needs are included in a grant must meet the same residence requirements as does the child concerned. Any dependent child or relative with whom the child is living meeting the above requirements shall be entitled to the assistance herein provided for, but the state shall pay the full amount of such assistance exclusive of the federal share unless and until the child and/or the relative with whom the child is living has been a resident of the county for a period of one (1) year.

History: En. Sec. 3, Part 4, Ch. 82 L. 1937; Subds. (d) and (e) rep. Sec. 9, Ch. 213, L. 1943; amd. Sec. 1, Ch. 148, L. 1947; amd. Sec. 1, Ch. 50, L. 1949; amd. Sec. 22, Ch. 199, L. 1951.

#### Collateral References

Paupers 19(7), 20(4), 43; Social Security and Public Welfare 194.
70 C.J.S. Paupers §§ 32, 37, 72; 81 C.J.S. Social Security and Public Welfare § 63.

See 31 Am. Jur. 783, Juvenile Courts and Delinquent, Dependent, and Neglected Children, generally.

Application for assistance. Application for assistance under this chapter shall be made to the county department of the county in which the dependent child is residing. Such application shall be made by the relative with whom the child is living or will live. One application may be made for several children of the same family if they reside with the same person. All individuals wishing to make application for this assistance shall have the opportunity to do so.

History: En. Sec. 4, Part 4, Ch. 82, L. 1937; amd. Sec. 3, Ch. 213, L. 1943; amd. Sec. 23, Ch. 199, L. 1951.

71-506. Investigation of applications. Whenever a county department receives a notification of the dependency of a child or an application for assistance, an investigation shall be promptly made. The investigation of each application for aid to dependent children shall be conducted by the county board through a staff worker of the county department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of information secured with regard to his circumstances. Upon completion of such investigation the county welfare board shall determine whether the child is eligible for and should receive a grant, the amount of assistance and the date on which assistance shall begin. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application.

History: En. Sec. 5, Part 4, Ch. 82, L. 1937; amd. Sec. 24, Ch. 199, L. 1951.

#### References

State ex rel. Frederick v. District Court, 119 M 143, 173 P 2d 626, 628.

71-507. Granting of assistance and amount of assistance. The amount of aid to dependent children granted in any case shall be determined by the county board of public welfare according to the rules and regulations and standards of assistance established by the state department, as required by the Federal Social Security Act.

History: En. Sec. 6, Part 4, Ch. 82, L. 1937; amd. Sec. 25, Ch. 199, L. 1951.

NOTE.—The Federal Social Security Act referred to in this section will be found in the United States Code, Title 42, sec. 301 et seq.

#### Collateral References

Paupers 41, 43(2); Social Security and Public Welfare 194.

70 C.J.S. Paupers §§ 69, 72; 81 C.J.S. Social Security and Public Welfare § 63.

71-508. County share of participation. Each county department shall reimburse the state department in the amount of one-third (1/3) of the approved aid to dependent children grants paid by the state department to persons in the county each month exclusive of the federal share. These reimbursements shall be credited to the aid to dependent children account of the state department.

History: En. Sec. 7, Part 4, Ch. 82, L. 1937; amd. Sec. 18, Ch. 129, L. 1939; amd. Sec. 1, Ch. 191, L. 1945; amd. Sec. 1, Ch. 71, L. 1947; amd. Sec. 6, Ch. 71, L. 1957; amd. Sec. 1, Ch. 7, L. 1961.

# Collateral References

Paupers 52; Social Security and Public Welfare 194.

70 C.J.S. Paupers § 79; 81 C.J.S. Social Security and Public Welfare § 63.

71-509. Periodic reconsideration and changes in amount of assistance—appointment of guardian. All assistance grants made under this chapter shall be reconsidered by the county department as frequently as may be required by the rules of the state department. After such further investigation as the county department may deem necessary or the state department may require, the amount of assistance may be changed or assistance may be entirely withdrawn if the state or county departments find that the child's circumstances have altered sufficiently to warrant such action, provided, however, that if the county department, after investigation, finds that any recipient is not utilizing the grant adequately for the needs of the child or children or is dissipating such grant, the county department may request the county attorney to file a petition in the district court for the appointment of such recipient as guardian of the assistance grant in behalf of the child or children. Such petition shall set forth the facts warranting such appointment. Notice of the hearing on such petition

shall be served upon the recipient and the county department not less than five (5) days before the date set for such hearing; such petition may be filed with the clerk of the district court and all process issued and served without payment of costs. If upon the hearing of such petition the court is satisfied that it is for the best interests of the child or children, and all parties concerned, that such guardian be appointed, he shall order such appointment, and may require such guardian to render to the court a detailed itemized account of expenditures of such assistance payments at such times as the court may deem advisable.

It is the intention of this act that the guardianship herein provided for shall be a special and limited guardianship solely for the purpose of safeguarding the assistance grants made to dependent children. Such guardianship shall terminate upon the termination of such assistance grant, or sooner on order of the court, upon good cause shown.

Providing however, when federal law or regulations permit that any amount in a sum not exceeding one hundred dollars (\$100.00) in any one (1) calendar year received by an enrolled member of a recognized Indian tribe as per capita payments or a share in the profits and receipts from tribal lands and interests or tribal enterprises shall not be used to decrease the amount of assistance received under this act.

History: En. Sec. 8, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1959; amd. Sec. 1, Ch. 152, L. 1959.

#### Compiler's Note

This section was amended twice by the 1959 Legislature. Once by Ch. 47 and once by Ch. 152. Chapter 47 provided that the act should be in effect upon its

passage and approval. It was approved February 26, 1959. Chapter 152 did not carry a specific effective date. As each act amended this section in different respects, they do not appear in conflict and the compiler has made a composite section incorporating the changes made by each amendment.

71-510. Removal to another county. A recipient of aid to dependent children who moves to another county in the state shall continue to receive assistance with the approval of the state department; the county from which he has moved shall be charged by the state department for such county share of his assistance for a period of one (1) year after which time the county to which he has moved shall be charged therefor. The state department will determine the date of transfer. The county from which a recipient moves shall notify the state department and the county to which the recipient moves.

History: En. Sec. 9, Part 4, Ch. 82, L. 1937; amd. Sec. 26, Ch. 199, L. 1951.

#### Collateral References

Paupers 21; Social Security and Public Welfare 194. 70 C.J.S. Paupers § 38; 81 C.J.S. Social Security and Public Welfare § 63.

# CHAPTER 6

PUBLIC WELFARE ACT PART 5—TO PROVIDE FOR AID TO NEEDY BLIND INDIVIDUALS IN CONFORMITY WITH TITLE 10 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935 OR AS AMENDED

Section 71-601. Definitions. 71-602. Administration.

- 71-603. Powers and duties of state blind commission devolve upon state department of public welfare.
- Eligibility for aid to needy blind. 71-604.
- Amount of assistance. 71-605.
- 71-606. Application for assistance. 71-607. Investigation of applications. 71-608. Repealed.
- 71-609. Periodic reconsideration and changes in amount of assistance.
- 71-610. Expenses for treatment.
- 71-611. County share of participation.
- 71-612. Change of residence of person receiving aid to blind.
- 71-613. Recovery from a recipient.
- Assistance may be paid to guardian. 71-614.

# 71-601. **Definitions.** As used in this title:

- (a) "Aid to blind" (or assistance) means money payments to or payments made for medical care in behalf of blind persons in need.
- "Supplementary services" means services other than money pay-(b) ments.
- "Ophthalmologist" means a physician licensed to practice medicine (c) in the state of Montana and who is actively engaged in the treatment of diseases of the human eye.
- "Optometrist" means a practitioner licensed to practice optometry in the state of Montana and who is actively engaged in such practice.

History: En. Sec. 1, Part 5, Ch. 82, L. 1937; amd. Sec. 1, Ch. 157, L. 1951; amd. Sec. 7, Ch. 71, L. 1957.

#### Collateral References

Paupers 43(1); Social Security and Public Welfare 221.
70 C.J.S. Paupers § 72; 81 C.J.S. Social Security and Public Welfare § 67.

- **71-602.** Administration. (a) The state department of public welfare is hereby authorized and is charged with the general administration and supervision of aid to blind under the powers, duties and functions as prescribed in sections 71-201 to 71-232.
- (b) The county department of public welfare shall be charged with the local administration and supervision of aid to blind, subject to the powers, duties and functions prescribed for the county department in sections 71-201 to 71-232.
- (c) It is hereby mandatory and required that the state plan and operation of aid to the blind shall be in effect in each and every county of the state and the administration and supervision of aid to the blind shall be uniform throughout the several counties of the state.
- The state department of public welfare shall have printed and distribute copies of this act to all county welfare departments and shall prescribe the form of and print and supply to the county welfare departments blanks of applications, reports and such other forms as may be necessarv in relation to aid to the blind.
- All rules and regulations of the state department of public welfare made under this act shall be binding upon the county departments of public welfare. The state board of public welfare shall make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of this chapter.

- (f) The state department shall co-operate with the federal government in matters of mutual concern pertaining to assistance to the blind, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance.
- (g) The state department shall make such reports in such forms and containing such information as the federal government may from time to time require, and comply with such provisions as the federal government may from time to time find necessary to assure the corrections and verification of such reports.
- (h) The state department shall publish an annual report and such interim reports as may be necessary or required.
- (i) The county department of public welfare shall administer the provisions of this chapter in the respective counties subject to the rules and regulations prescribed by the state department pursuant to the provisions of this chapter.
- (j) The state department shall designate the procedure to be followed in securing a competent medical examination for the purpose of determining blindness in the individual applicant for assistance.
- (k) The state department shall promulgate rules and regulations stating, in terms of ophthalmic measurements, the amount of visual acuity which an applicant may have and still be eligible for assistance under this chapter.
- (1) The state department shall designate a suitable number of ophthal-mologists, duly licensed to practice medicine in Montana and actively engaged in the treatment of diseases of the human eye, to examine applicants and recipients of assistance to the blind. The state department shall designate a suitable number of optometrists, duly licensed to practice optometry in Montana and actively engaged in such practice, to examine applicants and recipients of assistance to the blind.
- (m) The state department shall fix and pay to ophthalmologists fees for examinations of applicants and recipients. The state department shall fix and pay to optometrists fees for examinations of applicants and recipients.

History: En. Sec. 2, Part 5, Ch. 82, L. 1937; amd. Sec. 2, Ch. 157, L. 1951.

71-603. Powers and duties of state blind commission devolve upon state department of public welfare. That it is hereby declared to be the intention of the legislative assembly that the powers and duties heretofore conferred upon the state blind commission as provided in chapter 42 of the Laws of 1939 shall hereafter devolve upon the state department of public welfare as provided in chapter 82 of the Laws of 1937 and acts amendatory thereof. It is the expressed intention of the legislature that if chapter 42 be regarded as repealing any part of chapter 82 of the Laws of 1937 by implication or otherwise, that the provisions of chapter 82 of the Laws of 1937, and acts amendatory thereof, shall be and are hereby revived.

History: En. Sec. 2, Ch. 55, L. 1943.

NOTE.—Chapter 42, Laws 1939, referred to above, was repealed by Sec. 1, Ch. 55, fare Act.

Laws 1943. Chapter 82, Laws 1937, was the original enactment of the Public Welfare Act.

- 71-604. Eligibility for aid to needy blind. Aid shall be granted under this chapter to any person who:
- (a) Has no vision or whose vision with correcting glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential and who has been examined and so certified by a fully licensed ophthalmologist or by a fully licensed optometrist;
- (b) Has income which is inadequate to provide a reasonable subsistence compatible with decency and health except that in determining need, the department may disregard earned income, as is provided in the Federal Social Security Act;
- (c) Is not receiving old age assistance, aid to dependent children or aid to the permanently and totally disabled, for himself or herself;
- (d) Has resided in the county in which application is made for at least one (1) year immediately preceding receipt of this assistance. Any person otherwise qualified who has resided in the state for five (5) years or more within the nine (9) years immediately preceding the application, one (1) year of which state residence shall have been immediately prior to the date of receipt of this assistance, and who has no legal county residence, shall file his application in the county in which he is residing, and his assistance shall be paid entirely from state funds until he can qualify as having a legal residence in the said county;
- (e) Is not an inmate of any public institution except as a patient in a public medical institution; is not a patient in an institution for tuberculosis or mental diseases or is not a patient in a medical institution as a result of having been diagnosed as having tuberculosis or psychosis.

History: En. Sec. 3, Part 5, Ch. 82, L. 1937; Subd. (c) amd. Sec. 4, Ch. 213, L. 1943; Subd. (g) rep. Sec. 9, Ch. 213, L. 1943; amd. Sec. 1, Ch. 81, L. 1949; amd. Sec. 3, Ch. 157, L. 1951; amd. Sec. 27, Ch. 199, L. 1951; amd. Sec. 1, Ch. 4, L. 1961.

NOTE.—The Federal Social Security Act referred to in this section will be found in the United States Code, Title 42, sec. 301 et seq.

#### Collateral References

Paupers 19(7), 43; Social Security and Public Welfare 221.

70 C.J.S. Paupers §§ 32, 72; 81 C.J.S. Social Security and Public Welfare § 67.

71-605. Amount of assistance. The amount of aid to needy blind granted any person shall be determined by the county board of public welfare according to the rules and regulations and standards of assistance established by the state department, as required by the Federal Social Security Act. The state department may, however, authorize grants or supplementary grants from state funds to be used in supplementary services such as the prevention or treatment of blindness.

History: En. Sec. 4, Part 5, Ch. 82, L. 1937; amd. Sec. 8, Ch. 117, L. 1941; amd. Sec. 8, Ch. 213, L. 1943; amd. Sec. 3, Ch. 47, L. 1949; amd. Sec. 28, Ch. 199, L. 1951.

NOTE.—The Federal Social Security Act referred to in this section will be found in the United States Code, Title 42, sec. 301 et seq.

71-606. Application for assistance. Application for assistance under this chapter shall be made to the county office of the county department in the county in which the person is residing. The application shall be in the manner and on the form prescribed by the state department of public

welfare. All individuals wishing to apply shall have the opportunity to do so.

History: En. Sec. 5, Part 5, Ch. 82, L. 1937; amd. Sec. 5, Ch. 213, L. 1943; amd. Sec. 29, Ch. 199, L. 1951.

71-607. Investigation of applications. Whenever a county public welfare department receives an application for assistance under this chapter an investigation shall be promptly made. The investigation of each application for aid to needy blind shall be conducted by the county board through a staff worker of the county department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of information secured with regard to his circumstances. Upon completion of such investigation the county welfare board shall determine whether the applicant is eligible for and should receive a grant and the amount of the assistance. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application, providing however when federal law or regulations permit that any amount in a sum not exceeding one hundred dollars (\$100.00) in any one (1) calendar year received by an enrolled member of a recognized Indian tribe as per capita payments or a share in the profits and receipts from tribal lands and interests or tribal enterprises shall not be used to decrease the amount of assistance received under this act.

History: En. Sec. 6, Part 5, Ch. 82, L. Sec. 30, Ch. 199, L. 1951; amd. Sec. 1, Ch. 1937; amd. Sec. 4, Ch. 157, L. 1951; amd. 153, L. 1959.

# 71-608. Repealed—Chapter 199, Laws of 1951.

Repeal repealed by Sec. 31, Ch. 199, Laws 1951. This section (Sec. 7, Part 5, Ch. 82, L. 1937), relating to granting of aid, was

71-609. Periodic reconsideration and changes in amount of assistance. All assistance grants made under this chapter shall be reconsidered by the county department as frequently as may be required by the rules of the state department. After such further investigation as the county department may deem necessary or the state department may require, the amount of assistance may be changed or assistance may be entirely withdrawn if the state or county departments find that the person's circumstances have altered sufficiently to warrant such action.

A recipient shall submit to a re-examination as to his eyesight when required to do so by the state department. He shall also furnish any information required by the state department.

History: En. Sec. 8, Part 5, Ch. 82, L. 1937.

71-610. Expenses for treatment. On the basis of the findings of the ophthalmologist's examination, supplementary services may be authorized by the state department to any applicant or recipient who is in need of treatment either to prevent blindness or to restore his eyesight whether or not he is blind, if he is otherwise qualified for assistance under this chapter. The supplementary services may include necessary traveling and other ex-

penses to receive treatment from a hospital or clinic designated by the state department.

History: En. Sec. 9, Part 5, Ch. 82, L. 1937.

#### Collateral References

Paupers 248; Social Security and Public Welfare € 221.

70 C.J.S. Paupers § 74; 81 C.J.S. Social Security and Public Welfare § 67.

County share of participation. Each county department shall reimburse the state department in the amount of one-third (1/3) of the approved aid to needy blind grants paid by the state department to persons in the county each month, exclusive of the federal share. Such reimbursement shall be credited to the aid to needy blind account of the state department.

History: En. Sec. 10, Part 5, Ch. 82, L. 1937; amd. Sec. 2, Ch. 69, L. 1947; amd. Sec. 2, Ch. 155, L. 1949; amd. Sec. 32, Ch. 199, L. 1951; amd. Sec. 8, Ch. 71, L. 1957; amd. Sec. 1, Ch. 8, L. 1961.

#### Collateral References

Paupers 52; Social Security and Public Welfare 221.

70 C.J.S. Paupers § 79; 81 C.J.S. Social Security and Public Welfare § 67.

71-612. Change of residence of person receiving aid to blind. A recipient who moves to another county in the state shall continue to receive assistance with the approval of the state department; the county from which he has moved shall be charged by the state department for such county share of his assistance for a period of one (1) year after which time the county to which he has moved shall be charged therefor. The state department will determine the date of transfer. The county from which a recipient moves shall notify the state department and the county to which the recipient moves.

History: En. Sec. 11, Part 5, Ch. 82, L. 1937; amd. Sec. 6, Ch. 213, L. 1943; amd. Sec. 33, Ch. 199, L. 1951.

### Collateral References

Paupers 21; Social Security and Publie Welfare € 221.

70 C.J.S. Paupers § 38; 81 C.J.S. Social Security and Public Welfare § 67.

71-613. Recovery from a recipient. If at any time during the continuance of aid to blind assistance the recipient thereof becomes possessed of any property or income in excess of the amount stated in the application, it shall be the duty of the recipient immediately to notify the county department of the receipt or possession of such property or income and the county department may, after investigation, either cancel the assistance or alter the amount thereof in accordance with the circumstances.

Any assistance paid after the recipient has come into possession of such property or income and in excess of his need shall be recoverable by the state as a debt due to the state.

History: En. Sec. 12, Part 5, Ch. 82, L. 1937.

#### Collateral References

Paupers 43(2); Social Security and Public Welfare 221.

70 C.J.S. Paupers § 72; 81 C.J.S. Social Security and Public Welfare § 67.

71-614. Assistance may be paid to guardian. If the person receiving aid to blind is, in the opinion of the county public welfare department, found incapable of taking proper care of himself or his money, the county public welfare board may make the necessary legal arrangements for the appointment of a guardian, and shall then direct that the aid to blind payments be paid to the guardian for the benefit of such irresponsible recipient.

History: En. Sec. 13, Part 5, Ch. 82, L. 1937.

#### Collateral References

Paupers 43(4); Social Security and Public Welfare 221.
70 C.J.S. Paupers § 72; 81 C.J.S. Social Security and Public Welfare § 67.

#### CHAPTER 7

PUBLIC WELFARE ACT PART 6-TO PROVIDE FOR SERVICES FOR CRIPPLED CHILDREN AND CHILD WELFARE SERVICES, IN CONFORMITY WITH TITLE 5, PARTS 2 AND 3 OF THE FEDERAL SOCIAL SECURITY ACT OF 1935, OR AS AMENDED, AND TRANSFERRING THE POWERS AND DUTIES OF THE STATE BUREAU OF CHILD PROTECTION AND THE ORTHOPEDIC COMMISSION TO THE AUTHORITY AND SUPERVISION OF THE STATE DEPARTMENT OF PUBLIC WELFARE

Section 71-701 to 71-705. Repealed.

71-706. Definitions as used in this chapter.

71-707. Organization and administration of activities. 71-708. Powers and duties of the state department.

71-709. Duty to strengthen child welfare services.

71-710. Child rehabilitation.

Other supervision of children, 71-711.

71-712. Accept custody of children committed by courts.

71-713. Recognition of parental control of children-assistance to other departments.

71-714. Duties of county board.

# 71-701 to 71-704. Repealed—Chapter 264, Laws of 1955.

ices for crippled children, were repealed These sections (Secs. 1 to 4, Ch. 126, by Sec. 28, Ch. 264, Laws 1955, effective L. 1941), relating to the division of serv-March 10, 1955.

# 71-705. Repealed—Chapter 264, Laws of 1955.

Repeal

the transfer of the bureau of child protection, was repealed by Sec. 28, Ch. 264, This section (Sec. 1, Part 6, Ch. 82, L. 1937), relating to the effective date for Laws 1955, effective March 10, 1955.

- 71-706. Definitions as used in this chapter. (a) Child welfare services mean: The establishing, extending and strengthening of child welfare services (especially in predominantly rural areas) for the protection and care of homeless, dependent and neglected children, and children in danger of becoming delinquent.
- Child welfare worker means: Staff personnel who have had education and training in the field of child welfare and who are qualified and accepted as such in conformity with the standards established by the state department of public welfare.

History: En. Sec. 2, Part 6, Ch. 82, L. 1937; amd. Sec. 25, Ch. 264, L. 1955.

#### Collateral References

Paupers 43(1); Social Security and Public Welfare 195. 70 C.J.S. Paupers § 72; 81 C.J.S. Social Security and Public Welfare § 65. 71-707. Organization and administration of activities. Child welfare services and child protection functions shall be organized under and administered and supervised by the state department of public welfare, subject to the general administration and regulations of the state department and the powers and duties thereof as established in sections 71-201 to 71-232, and providing for co-operation and exchange of services with the state board of health and vocational rehabilitation bureau of the state of Montana.

History: En. Sec. 3, Part 6, Ch. 82, L. 1937; amd. Sec. 26, Ch. 264, L. 1955.

- 71-708. Powers and duties of the state department. Subject to the authority and regulations of the state department and in co-operation with the federal children's bureau, the state department shall:
- (a) Select and appoint, from a qualified list, such personnel as are necessary to efficiently supervise and perform the purposes of this chapter.
- (b) Subject to the approval of the state board, make such rules and regulations as are necessary to carry out the purposes of this chapter.
- (c) Administer or supervise all child welfare activities of the state except such child welfare activities as are administered by the state board of health.

History: En. Subd. (a), (b), (c), (d), Sec. 4, Part 6, Ch. 82, L. 1937; Subd. (a) rep. Sec. 10, Ch. 117, L. 1941.

References

State ex rel. Frederick v. District Court, 119 M 143, 173 P 2d 626, 628.

71-709. Duty to strengthen child welfare services. The state department shall make provision for establishing and strengthening child welfare services, including protective services and for care of children in family foster homes. When funds are available for that purpose, the child welfare division shall have the right to make agreements for the payment of compensation for keeping children in family foster homes subject to the approval of the state department.

History: En. Subd. (e), Sec. 4, Part 6, Ch. 82, L. 1937; amd. Sec. 19, Ch. 129, L. 1939.

References

State ex rel. Frederick v. District Court, 119 M 143, 173 P 2d 626, 628.

# 71-710. Child rehabilitation. The state department shall:

- (a) Enforce all laws pertaining to children and take the initiative in all matters involving the interest of illegitimate, dependent, neglected and delinquent children where adequate provision therefor has not been made by law; and to use funds available for cases where special medical or material assistance is necessary to rehabilitate subnormal or physically handicapped children and where it is not otherwise provided for by law; and co-operate for the purposes hereof with all reputable child helping and child placing agencies.
- (b) Inspect, license and supervise public and private infants' homes, child caring and child placing institutions and agencies.

History: En. Subd. (f), (g), (h), Sec. 4, Part 6, Ch. 82, L. 1937; amd. Sec. 9, Ch. 117, L. 1941; amd. Sec. 27, Ch. 264, L. 1955.

#### References

State ex rel. Frederick v. District Court, 119 M 143, 173 P 2d 626, 628.

71-711. Other supervision of children. The state department shall supervise the importation and exportation of children.

History: En. Subd. (i), Sec. 4, Part 6, Ch. 82, L. 1937.

71-712. Accept custody of children committed by courts. The state department shall accept the guardianship or custody of children committed by the courts to the state department and arrange for their care in family foster homes or otherwise in co-operation with county departments of public welfare.

History: En. Subd. (j), Sec. 4, Part 6, Ch. 82, L. 1937; amd. Sec. 20, Ch. 129, L. 1939.

References

State ex rel. Frederick v. District Court, 119 M 143, 173 P 2d 626, 628.

71-713. Recognition of parental control of children—assistance to other departments. Nothing in this act shall be construed as authorizing any state or county official, agent or representative, in carrying out any of the provisions of this act, to take charge of any child over the objection of either of the parents of such child, or the person standing in loco parentis to such child, except pursuant to a proper court order.

The state department shall assist other departments, agencies and public and private institutions of the state and federal government when so requested, by performing services in conformity with the purposes of this chapter, and particularly such services and duties as may be assigned to it by any state board composed of state officers; provided such services and duties are legally within the duties of such state board.

History: En. Subd. (k) and (l), Sec. 4, Part 6, Ch. 82, L. 1937.

References

State ex rel. Frederick v. District Court, 119 M 143, 173 P 2d 626, 628.

71-714. Duties of county board. The county board of public welfare shall supervise the local administration of child welfare services under the powers and duties set forth in sections 71-201 to 71-232, and subject to the rules and regulations of the state department.

Regular staff workers of the county department will handle the work of child welfare services in the county. Where such personnel are not qualified to handle the work of child welfare services, the state department will arrange for the services of such special child welfare workers as are necessary.

History: En. Sec. 5, Part 6, Ch. 82, L. 1937.

### CHAPTER 8

PUBLIC WELFARE ACT—PART 7 (ONLY SEC. 1 OF PART 7 OF THE PUBLIC WELFARE ACT IS GIVEN IN THIS COMPILATION. THE REPEALING AND SEVERABILITY CLAUSES ARE OMITTED.)

Section 71-801. Title of act.

71-801. Title of act. This act may be cited as the "Public Welfare Act." History: En. Sec. 1, Part 7, Ch. 82, L. 1937.

# CHAPTER 9

# PUBLIC WELFARE ACT PART 8—APPROPRIATIONS, DISPOSITION OF FUNDS AND DISBURSEMENTS

Section 71-901. Receipt of funds.

71-902. Source of state appropriation.

71-903. Method of disbursement.

71-904. Transfer of funds from specific accounts.

71-901. Receipt of funds. The treasurer of the state of Montana is hereby designated as the appropriate fiscal officer of the state to receive federal funds. All money appropriated by the legislature for public welfare purposes, all money received from the United States government for public welfare purposes, and all money received from any other source for the purposes set forth in the Public Welfare Act shall be paid into the state treasury and constitute a special fund to be designated as the public welfare fund.

History: En. Sec. 1, Part 8, Ch. 82, L. 1937.

Collateral References
Paupers 11.
70 C.JS. Paupers § 19.

71-902. Source of state appropriation. For carrying out the duties and obligations of the state department, for the performance of welfare services of the state, and for matching such federal funds as may be available for the aforesaid welfare services, the legislature shall make appropriation out of the general fund of the state for the various and separate activities of the state department and county departments of public welfare.

History: En. Sec. 2, Part 8, Ch. 82, L. 1937.

References

State ex rel. Haynes v. District Court, 106 M 470, 478, 78 P 2d 937.

71-903. Method of disbursement. The state department of public welfare shall disburse all public assistance grants and costs of administration as provided for in each part of this act and all other expenditures authorized to be made by the department. The funds appropriated shall be made available for such disbursements in the following manner:

From the appropriations made, the state department of public welfare shall as soon as it finds that it needs the money, be provided with an imprest fund for each quarter of each fiscal year ordinarily not exceeding one-fourth of the appropriation made for the fiscal year; provided, however, that for good cause shown a larger portion than one-fourth of the appropriation for the fiscal year may be included in the imprest fund for any quarter. Any unexpended balance of the imprest fund made available for one quarter and remaining unexpended at the end of such quarter shall remain available for the use of the department for the succeeding quarter. The state department shall be responsible and liable to the state for all funds so received, and the department may divide the funds received among such specific accounts as it may deem necessary or desirable to establish.

In order to obtain money for the imprest fund, the department shall present claims to the state board of examiners; upon being approved by the state board of examiners and presented to the state auditor, the state

auditor shall issue his warrant or warrants, and upon the receipt of such warrant or warrants the state treasurer shall disburse the amounts allowed to the state department of public welfare.

The state department shall establish and maintain a bank account or accounts properly safeguarded by the deposit of such securities as may be used by depositories as security for funds under the control of the state treasurer, and these securities shall be subject to the approval of the state examiner and the state board of public welfare. This account or accounts shall be subject to checks or orders drawn by the state department for the payment of assistance grants, the cost of administration of the state and county departments and for all other expenditures authorized to be made by the department.

The appropriations made for the period beginning with March 2, 1939, and terminating with June 30, 1939, shall be made available through the method above indicated as rapidly as the state department finds that the funds are needed.

When any of the said funds are deposited in any bank or banks pursuant to the foregoing provisions and securities have been deposited to safeguard these deposits as above required, and the securities have been approved by the state examiner and by the state board of public welfare, the state department of public welfare and all its officers and employees shall be released from any liability to the state for any loss that might occur through the failure of the bank to repay such funds so deposited or any part thereof up to the full amount of the securities deposited.

History: En. Sec. 3, Part 8, Ch. 82, L. 1937; amd. Sec. 21, Ch. 129, L. 1939.

Collateral References

Paupers 11; States 123.
70 C.J.S. Paupers § 19; 81 C.J.S. States § 156 et seq.

71-904. Transfer of funds from specific accounts. Any money appropriated or earmarked for any specific account or purpose not needed for such account or purpose may be transferred by the state board of public welfare to any other account or purpose under the authority of the state department of public welfare. This transfer shall be effective and be deemed completed when the state board of public welfare has entered an order for such transfer upon its minutes and the state auditor has been notified of the action taken.

History: En. Sec. 5, Part 8, Ch. 82, L. 1937; amd. Sec. 22, Ch. 129, L. 1939.

#### CHAPTER 10

# PUBLIC WELFARE ACT PART 9—TO PROVIDE FOR PAYMENTS TO PERSONS HAVING SILICOSIS

Section 71-1001. Definitions.

71-1002. Administration.

71-1003. Eligibility requirements for aid to persons having silicosis, as herein defined.

71-1004. Amounts of payments.71-1005. Application for payment.71-1006. Investigation of applications.

0 11

71-1007. Making payments.

71-1008. Conformity with acts of federal government.

71-1009. Transfer of records and payrolls—benefits unimpaired by transfer of responsibility.

71-1001. Definitions. (a) "Payments" means money payments to persons having silicosis as herein defined.

- (b) "Silicosis" means a fibrotic condition of the lungs due to the inhalation of silica dust which results in total disability to do manual labor.
- (c) "Examining board" shall mean well qualified physician or physicians, as designated by the industrial accident board.

History: Sec. 1, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 225, L. 1961.

71-1002. Administration. (a) The industrial accident board of the state of Montana is hereby authorized and charged with the general supervision of this chapter under the powers, duties and functions as prescribed herein as amended.

All powers, duties and functions previously vested in the state department of public welfare in relation to this chapter are hereby transferred to the industrial accident board of the state of Montana.

- (b) Any powers, duties or functions previously vested in the county departments of public welfare in relation to this chapter are hereby transferred to the industrial acceident board of the state of Montana.
- (c) The industrial accident board of the state of Montana shall formulate a plan and promulgate regulations for the operation of this chapter.
- (f) The industrial accident board shall co-operate with the federal government in all matters of immediate concern pertaining to silicosis.
- (g) The industrial accident board shall publish an annual report and interim reports as may be necessary or required or asked for by the governor.
- (i) The industrial accident board shall designate the procedure to be followed in securing a competent medical examination for the purposes of determining silicosis in each individual applicant.
- (j) The industrial accident board shall designate suitable physicians or physician, well qualified to examine applicants for aid under this chapter.
- (k) The industrial accident board shall pay the actual transportation expenses of any applicant from the place of his residence in the state to the place of examination and return, from fund appropriated to the board for that purpose.
- (l) The industrial accident board shall develop and co-operate with other agencies in developing measures for the prevention of silicosis.

History: Sec. 2, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 225, L. 1961.

Compiler's Note

This section, as amended by Ch. 225, Laws 1961, did not contain a subd. (d), (e), or (h).

71-1003. Eligibility requirements for aid to persons having silicosis, as herein defined. Payments shall be made under this act to any person who:

- (a) Has silicosis, as defined in section 71-1001, which results in his total disability so as to prevent him from engaging in a gainful occupation. The term "gainful occupation" as used herein shall not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential, but shall mean any person having an income from any other source exceeding one hundred fifty dollars (\$150.00) per month.
- (b) Has resided in and been an inhabitant of the state of Montana for ten (10) years, or more, immediately preceding the date of the application.
- (c) Has silicosis and is entitled to payments under this act, but who is not at the time of receiving a payment an inmate of a penal institution, or is not a patient or inmate of any institution for the treatment of mental diseases, or is not a patient in a medical institution as a result of having been diagnosed as having a psychosis. If the person to whom payment has been ordered to be paid is an inmate of Montana state tuberculosis sanatorium, then and in that case the payment herein provided for shall be made to his wife and children, if any.
- (d) Is not receiving, with respect to any month for which he would receive a payment under this act, compensation under the Workmen's Compensation Act of the state of Montana, as provided by chapter 155, Laws of 1959, which will equal the sum of seventy-five dollars (\$75.00) hereunder. If he is receiving payments under the Workmen's Compensation Act, as provided by chapter 155, Laws of 1959, which is less in the aggregate than seventy-five dollars (\$75.00), then he is entitled to a payment under this act of the difference between the amount received under the Workmen's Compensation Act, as provided by chapter 155, Laws of 1959, and seventy-five dollars (\$75.00) per month.

History: Sec. 3, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961.

#### Compiler's Notes

The amendment made by Ch. 3, Laws 1961, increasing the monthly amounts shown in subd. (d) from \$65.00 to \$75.00, was adopted by Ch. 225, Laws 1961, which added "as provided by chapter 155, Laws of 1959."

Chapter 155, Laws of 1959, referred to above is the Occupational Disease Act compiled as secs. 92-1301 to 92-1368.

71-1004. Amounts of payments. Subject to the provisions of this act and the deductions herein provided, any person who has silicosis, as defined in this chapter, and who has, subject to the regulations and standards of the industrial accident board; been determined by the industrial accident board to be entitled to a payment under this chapter for silicosis, shall be granted a payment by the said industrial accident board of seventy-five dollars (\$75.00) per month subject to such appropriations as may from time to time be made. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein.

History: Sec. 4, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 216, L. 1947; amd. Sec. 2, Ch. 192, L. 1949; amd. Sec. 1, Ch. 204, L.

1953; amd. Sec. 2, Ch. 252, L. 1955; amd. Sec. 1, Ch. 248, L. 1959; amd. Sec. 4, Ch. 225, L. 1961.

71-1005. Application for payment. Application for payment under this chapter shall be made by the person seeking such payment to the industrial accident board. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the industrial accident board. The application form may be filled in and written by a person authorized by the industrial accident board. If the applicant is unable to sign his or her name on the application, a duly witnessed mark may be used.

History: Sec. 5, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 5, Ch. 225, L. 1961.

71-1006. Investigation of applications. Whenever the industrial accident board under this chapter receives an application for a payment an investigation and record shall be promptly made of the validity of the claim. The object of such investigation shall be to ascertain whether or not the applicant is entitled to a payment under the provision of this chapter, and such other information as may be required by the rules of the industrial accident board. The investigation of such applicant shall be conducted by representatives of the industrial accident board. The physicians or physician designated by the industrial accident board as herein provided shall constitute an examining board for such clinical, pathological, X-ray and Roentgen examinations as in the opinion of the examining board may be necessary to determine whether or not the applicant has silicosis, as herein defined. A certified report of such examination from the examining board of physicians or physician must be attached to the investigation report.

History: Sec. 6, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 6, Ch. 225, L. 1961.

71-1007. Making payments. Upon the completion of such investigation the industrial accident board shall determine whether or not the applicant is entitled to a payment under this chapter. The board shall then notify the applicant of its decision.

History: Sec. 7, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 7, Ch. 225, L. 1961.

71-1008. Conformity with acts of federal government. If and when the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, as herein defined, the industrial accident board of the state of Montana is hereby authorized to administer in the state of Montana such grants-in-aid and payments in addition to grants made by this act. The total payments to any individual under this act shall not exceed seventy-five dollars (\$75.00) per month exclusive of any grants made by Congress.

History: Sec. 8, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 3, Ch. 216, L. 1947; amd. Sec. 3, Ch. 192, L. 1949; amd. Sec. 2, Ch. 204, L.

1953; amd. Sec. 3, Ch. 252, L. 1955; amd. Sec. 2, Ch. 3, L. 1961; amd. Sec. 8, Ch. 225, L. 1961.

Compiler's Note

The amendment made by Ch. 3, Laws 1961, increasing the monthly maximum payment specified in the second sentence from \$65.00 to \$75.00, was adopted by Ch. 225, Laws 1961, which substituted "industrial accident board" for "public welfare department" in the first sentence.

Transfer of records and payrolls—benefits unimpaired by 71-1009. transfer of responsibility. It shall be the duty of the state department of public welfare to turn over and deliver to the industrial accident board all records and payrolls now held by the state department of public welfare.

No person receiving benefits under this chapter shall be deprived of those benefits by reason of the transfer of the general supervision and total administration from the state department of public welfare to the industrial accident board of the state of Montana.

History: En. 71-1009 by Sec. 9, Ch. 225. L. 1961.

#### CHAPTER 11

#### SALE OF REAL PROPERTY HELD BY PUBLIC WELFARE DEPARTMENT

Section 71-1101. Determination of welfare board to sell real property.

71-1102. Approval by board of examiners. Advertising for sale.

71-1103.

71-1104. Place and conditions of sale.

71-1105. Notice of sale—publication and contents.

71-1106. Approval of sale—conveyance. 71-1107. Payment of costs of sale.

71-1101. Determination of welfare board to sell real property. Whenever a majority of all of the members of the state board of public welfare, at any regular or special meeting of such board, shall determine that it would be for the best interests of the state department of public welfare to sell any real property which it has acquired, or may acquire in the future, the title to which is in the state of Montana for the use and benefit of the state department of public welfare, a certified copy of said determination shall be transmitted to the state board of examiners.

History: En. Sec. 1, Ch. 23, L. 1947.

71-1102. Approval by board of examiners. Upon the receipt of such determination, the state board of examiners shall at its next or subsequent meeting or meetings give consideration to the determination made by the state board of public welfare, and if such determination is approved by a majority of the state board of examiners they shall so certify their approval to the commissioner of state lands.

History: En. Sec. 2, Ch. 23, L. 1947.

71-1103. Advertising for sale. The commissioner of state lands upon receipt of such certificate of approval shall forthwith proceed to advertise and offer such real property for sale and sell the same as hereinafter provided.

History: En. Sec. 3, Ch. 23, L. 1947.

71-1104. Place and conditions of sale. All such sales as herein provided shall be only at public auction held at a designated room in the county courthouse in the county wherein the property to be sold is located, or on the property to be sold, in the discretion of the commissioner. All sales shall be for each and subject to the approval of the state board of examiners.

History: En. Sec. 4, Ch. 23, L. 1947.

#### Collateral References

What constitutes a "public sale." 4 ALR 2d 575.

71-1105. Notice of sale—publication and contents. The commissioner shall cause a notice of every such sale to be given by publication in the official county paper of the county where the sale is to be held once each week through four consecutive weeks (five issues) next preceding the date of sale. Such notice shall give the day, date and time of day of the beginning of the sale; shall contain a description and location of the land to be sold, in the form which will advise the public of its location and area if it is unplatted property. The notice shall also give the terms and conditions of sale and such additional information as the commissioner may deem useful.

History: En. Sec. 5, Ch. 23, L. 1947.

71-1106. Approval of sale—conveyance. After the sale the commissioner shall make written report to state board of examiners of the sale and if the report is approved by a majority of such board a conveyance shall be executed to the purchaser on behalf of the state of Montana, by the governor and attested by the secretary of state.

History: En. Sec. 6, Ch. 23, L. 1947.

71-1107. Payment of costs of sale. All costs of advertising and conducting the sale shall be paid from the proceeds thereof and the residue deposited in the state treasury to the credit of the state department of public welfare.

History: En. Sec. 7, Ch. 23, L. 1947.

#### CHAPTER 12

#### PERMANENTLY AND TOTALLY DISABLED PERSONS IN NEED

Section 71-1201. Provision for administration.

71-1202. Eligibility requirements for aid to the permanently and totally disabled.

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71-1207. Investigation of applications. 71-1208. Redetermination of eligibility.

71-1209. Assistance may be paid to guardian.

71-1210. Change of residence of persons receiving aid to the permanently and totally disabled.

71-1201. Provision for administration. (a) The state department of public welfare is hereby authorized and is charged with the general administra-

tion and supervision of aid to the permanently and totally disabled under the powers, duties and functions as prescribed in sections 71-201 through 71-232.

- (b) The county departments of public welfare are hereby charged with the local administration and supervision of aid to the permanently and totally disabled subject to the powers, duties and functions prescribed for the county departments in sections 71-201 through 71-232.
- (c) It is hereby mandatory and required that the state plan and operation of aid to the permanently and totally disabled shall be in effect in each and every county of the state and that the administration and supervision of aid to the permanently and totally disabled shall be uniform throughout the several counties of the state.
- (d) All rules and regulations of the state department of public welfare made under this act shall be binding upon the county departments of public welfare.
- (e) Aid to the permanently and totally disabled, as used in this chapter, means money payments to or payments made for medical care in behalf of needy individuals eighteen (18) years of age or over who are permanently and totally disabled.

History: En. Sec. 1, Ch. 160, L. 1951; amd. Sec. 9, Ch. 71, L. 1957.

71-1202. Eligibility requirements for aid to the permanently and totally disabled. Aid to the permanently and totally disabled shall be granted any person who:

(a) Has attained the age of eighteen (18) years;

- (b) Has income which is inadequate to provide a reasonable subsistence compatible with decency and health;
- (c) Has been a resident of the state of Montana for at least one (1) year immediately prior to the date of receipt of this assistance. Any person otherwise qualified who has resided in a county for one (1) year shall thereby acquire residence in that county which residence shall be retained until residence is acquired in another county by residing there for one (1) year. If a person has not resided in a county for one (1) year, but has resided in the state for one (1) year, an application for this assistance shall be made in the county in which he is residing but the state shall bear the entire cost of his assistance exclusive of the federal share until he has acquired county residence;

(d) Is permanently and totally disabled as defined by the rules and regulations of the state department of public welfare;

- (e) Is not an inmate of a public institution, except as a patient in a public medical institution; is not a patient in an institution for tuberculosis or mental diseases, or is not a patient in a medical institution as a result of having been diagnosed as having tuberculosis or psychosis;
- (f) Is not receiving old age assistance, aid to dependent children or aid to needy blind for himself or herself.

History: En. Sec. 2, Ch. 160, L. 1951.

Collateral References Paupers 39(1). 70 C.J.S. Paupers § 66. 71-1203. Determination of permanent and total disability. Determination of the existence of permanent and total disability shall be by competent medical, social work and other technical personnel in accordance with the rules and regulations of the state department.

History: En. Sec. 3, Ch. 160, L. 1951.

71-1204. Amount of assistance. The amount of aid to the permanently and totally disabled granted any person shall be determined by the county department of public welfare according to the rules and regulations and standards of assistance established by the state department.

History: En. Sec. 4, Ch. 160, L. 1951.

71-1205. Application for assistance. Application for assistance under this chapter shall be made to the county office of the county department in the county in which the person is residing. The application shall be in the manner and on the form prescribed by the state department of public welfare. All individuals wishing to apply shall have the opportunity to do so.

History: En. Sec. 5, Ch. 160, L. 1951.

71-1206. County share of participation. Each county department shall reimburse the state department in the amount of two-thirds (2/3) of the approved aid to the permanently and totally disabled grants paid by the state department to persons in the county each month, exclusive of the federal share. Such reimbursements shall be credited to the aid to the permanently and totally disabled account of the state department.

History: En. Sec. 6, Ch. 160, L. 1951; amd. Sec. 10, Ch. 71, L. 1957; amd. Sec. 1, Ch. 6, L. 1961.

71-1207. Investigation of applications. Whenever the county department receives an application for aid to the permanently and totally disabled an investigation shall be promptly made. The investigation of each application for aid to the permanently and totally disabled shall be conducted by a staff worker of the county department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of information secured with regard to his circumstances. Upon completion of such investigation, the staff of the county welfare department shall determine whether the applicant is eligible for and should receive a grant and the amount of the assistance. The county public welfare board shall review the determination made by the staff of the county department. Aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application, providing, however, when federal law or regulations permit that any amount in a sum not exceeding one hundred dollars (\$100.00) in any one (1) calendar year received by an enrolled member of a recognized Indian tribe as per capita payments or a share in the profits and receipts from tribal lands and interests or tribal enterprises shall not be used to decrease the amount of assistance received under this act.

History: En. Sec. 7, Ch. 160, L. 1951; amd. Sec. 1, Ch. 104, L. 1959.

71-1208. Redetermination of eligibility. All aid to the permanently and totally disabled cases approved under this chapter shall be reviewed as often as shall be required under the rules and regulations of the state department. The review shall include a redetermination of eligibility factors and the amount of payment.

History: En. Sec. 8, Ch. 160, L. 1951.

71-1209. Assistance may be paid to guardian. If the person receiving aid to the permanently and totally disabled is, in the opinion of the county public welfare department, found incapable of taking proper care of himself or his money, the county public welfare board may make the necessary legal arrangements for the appointment of a guardian and shall then direct that the assistance payments be paid to the guardian for the benefit of such irresponsible recipient.

History: En. Sec. 9, Ch. 160, L. 1951.

71-1210. Change of residence of persons receiving aid to the permanently and totally disabled. A recipient who moves to another county in this state shall continue to receive assistance with the approval of the state department; the county from which he has moved shall be charged by the state department for such county share of his assistance for a period of one (1) year after which time the county to which he has moved shall be charged therefor. The state department will determine the date of transfer and the counties concerned shall abide by the rules and regulations of the state department which relate to the transfer of assistance payments.

History: En. Sec. 10, Ch. 160, L. 1951.

#### CHAPTER 13

#### PRIVILEGES OF BLIND AND PHYSICALLY DISABLED PERSONS

Section 71-1301. Leasing of concessions in public buildings—preferences to blind and physically disabled persons—assignment of lease prohibited.
71-1302. "Blind persons" defined.

71-1301. Leasing of concessions in public buildings—preferences to blind and physically disabled persons—assignment of lease prohibited. Whenever any room, corridor or other part of, or space in any public building owned or controlled by the state of Montana, or any agency thereof, or owned or controlled by any county, city or other political subdivision of said state, shall be leased, licensed or otherwise made available to private persons for use as a vending stand or other similar commercial enterprise, blind persons and persons disabled by loss of limb or other physical impairment, shall have and be given the first right and preference to such commercial use thereof; provided, however, that every lease, license or other contract, which may be made pursuant to this act and for the purpose of allowing a preference to a blind or disabled person shall prohibit the transfer by sublease, assignment or otherwise of the right acquired; and provided further, that nothing herein contained shall be construed as a denial of the right to renew existing contracts held by persons who are not entitled to preference under this act.

History: En. Sec. 1, Ch. 66, L. 1951.

71-1302. "Blind persons" defined. For the purpose of this act, the term "blind person" shall mean one who has no vision or whose vision with correcting glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential.

History: En. Sec. 2, Ch. 66, L. 1951.

#### CHAPTER 14

#### SERVICES TO THE BLIND

Section 71-1401. Definitions.

71-1402. Administrator. 71-1403. Supervisor—duties.

71-1404. Administration.

71-1405. Co-operation with federal government. 71-1406. Receipt and disbursement of federal funds.

71-1407. Gifts.

71-1408. Eligibility for vocational rehabilitation services.

71-1409. Eligibility for rehabilitation services.

71-1410. Maintenance not assignable.

71-1411. Hearings. 71-1412. Misuse of lists and records. 71-1413. Saving clause.

71-1414. Appropriation authorization.

71-1415. Short title.

#### 71-1401. **Definitions.** As used in this act:

- (a) "State department" means the state department of public welfare.
- "State board" means the state board of public welfare.
- "Administrator" means the administrator of the state department of public welfare.
- "Supervisor" means the supervisor of the program of services for the blind.
- "Vocational rehabilitation" and "vocational rehabilitation services" mean any services, provided directly or through public or private instrumentalities, found by the supervisor to be necessary to compensate a blind individual for his employment handicap, and to enable him to engage in a remunerative occupation including, but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational and business licenses, tools, equipment, initial stocks and supplies, including livestock, capital advances, maintenance, and training books and materials.
- (f) "Rehabilitation services" means any services, provided directly or through public or private instrumentalities, found by the supervisor to be necessary to compensate a blind individual for his employment handicap or to enable him to achieve the maximum degree of self-care and to engage in productive tasks including, but not limited to, services of the type described in subsection (d) hereof.
- (g) "Rehabilitation training" means all necessary training provided to a blind individual to compensate for his employment handicap including but not limited to, manual, preconditioning prevocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

- (h) "Physical restoration" means any medical, surgical or therapeutic treatment necessary to correct or substantially reduce a blind individual's employment handicap within a reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory conditions.
- (i) "Prosthetic appliance" means any artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.
- (j) "Occupational licenses" means any license, permit or other written authority required by any governmental unit to be obtained in order to engage in an occupation.
- (k) "Business licenses" means any license, permit or other written authority required by any governmental unit to be obtained in order to engage in a business.
- (1) "Maintenance" means money payments not exceeding the estimated cost of subsistence during the provision of vocational rehabilitation and rehabilitation services.
- (m) "Blind individual" means an individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees; or who has other eye conditions which render vision equally defective; or who has an eye condition which will cause blindness.

History: En. Sec. 1, Ch. 167, L. 1955.

71-1402. Administrator. The program shall be administered, under the general supervision and direction of the state department, by a supervisor and such other staff as designated by the administrator in accordance with established personnel standards of the state department and on the basis of their education, training, experience and demonstrated ability.

History: En. Sec. 2, Ch. 167, L. 1955.

# 71-1403. Supervisor—duties. In carrying out his duties under this act, the supervisor:

- (a) shall, with the approval of the state department, make regulations governing the protection of records and confidential information, the manner and form of filing applications, eligibility, and investigation and determination thereof, for vocational rehabilitation and other services, procedures for fair hearings and such other regulations as he finds necessary to earry out the purposes of this act;
- (b) shall, with the approval of the administrator establish appropriate subordinate administrative units;
- (c) shall, with the approval of the state administrator, take such other action as he deems necessary or appropriate to carry out the purposes of this act.

History: En. Sec. 3, Ch. 167, L. 1955.

- 71-1404. Administration. Except as otherwise provided by law, the state department, shall provide the services authorized by this act to blind individuals determined by the supervisor to be eligible therefor and, in carrying out the purposes of this act the department may, among other things:
- (a) co-operate with other departments, agencies and institutions, both public and private, in providing the services authorized by this act to blind individuals, in studying the problems involved therein, and in establishing, developing and providing, in conformity with the purposes of this act, such programs, facilities and services as may be necessary or desirable;
- (b) enter into reciprocal agreements with other states to provide the services authorized by this act to residents of the states concerned;
- (c) conduct research and compile statistics relating to the provision of services to or the need of services of blind individuals.

History: En. Sec. 4, Ch. 167, L. 1955.

71-1405. Co-operation with federal government. The state department, may co-operate, pursuant to agreements with the federal government, in carrying out the purposes of any federal statutes pertaining to the purposes of this act and to comply with such conditions as may be necessary to secure the full benefits of such federal statutes.

History: En. Sec. 5, Ch. 167, L. 1955.

71-1406. Receipt and disbursement of federal funds. The state treasurer is hereby designated as the custodian of all funds received from the federal government for the purpose of carrying out any federal statutes pertaining to the purposes of this act. The state treasurer shall make disbursements from such funds and from all state funds available for such purposes upon certification of the administrator in accord with the regulations so provided.

History: En. Sec. 6, Ch. 167, L. 1955.

71-1407. Gifts. The administrator is hereby authorized and empowered, with the approval of the state board, to accept and use gifts made unconditionally by will or otherwise for the purposes of this act. Gifts made under such conditions as in the judgment of the state board are proper and consistent with the provisions of this act may be so accepted and shall be held, invested, reinvested, and used in accordance with the conditions of the gift.

History: En. Sec. 7, Ch. 167, L. 1955.

71-1408. Eligibility for vocational rehabilitation services. Vocational rehabilitation services shall be provided to any blind individual (1) who, at the time of filing his application therefor, resides in the state for other than a temporary purpose, and whose vocational rehabilitation the supervisor determines, after full investigation, can be satisfactorily achieved, or (2) who is eligible therefor under the terms of an agreement with another state or with the federal government; provided that, except as

otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals certified to the state department thereunder, the following vocational rehabilitation services shall be provided at public cost only to blind individuals found to require financial assistance with respect thereto:

- (a) Physical restoration.
- (b) Transportation not provided to determine the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary.
  - (c) Occupational and business licenses.
- (d) Tools, equipment, initial stock and supplies, including livestock and capital advances.
  - (e) Training books and materials.
  - (f) Maintenance.

History: En. Sec. 8, Ch. 167, L. 1955.

71-1409. Eligibility for rehabilitation services. Rehabilitation services shall be provided to any blind individual (a) who, at the time of filing his application therefor resides in the state for other than a temporary purpose, (b) who the supervisor, after full investigation, determines can be assisted, through the provision of such services, to achieve a more useful and purposeful life, or (c) who is eligible therefor under the terms of an agreement with another state or with the federal government.

History: En. Sec. 9, Ch. 167, L. 1955.

71-1410. Maintenance not assignable. The right of any individual to maintenance under this act shall not be transferable or assignable at law or in equity.

History: En. Sec. 10, Ch. 167, L. 1955.

71-1411. Hearings. Any individual applying for or receiving vocational rehabilitation or any other services authorized by this act who is aggrieved by any action or inaction of the state department shall be entitled, in accordance with regulations, to a fair hearing by the state department.

History: En. Sec. 11, Ch. 167, L. 1955.

71-1412. Misuse of lists and records. It shall be unlawful, except for purposes directly connected with the administration of the programs authorized by this act, and in accordance with regulations, for any person or persons to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, or names of, or any information concerning, persons applying for or receiving vocational rehabilitation or any other services authorized by this act, directly or indirectly derived from the records, papers, files, or communications of the state or subdivisions or agencies thereof, or acquired in the course of the performance of official duties.

History: En. Sec. 12, Ch. 167, L. 1955.

71-1413. Saving clause. The legislative assembly reserves the right to amend or repeal all or any part of this act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this act or by acts done pursuant thereto shall exist subject to the power of the legislative assembly to amend or repeal this act at any time.

History: En. Sec. 15, Ch. 167, L. 1955.

71-1414. Appropriation authorization. There are hereby authorized to be included in the appropriations for the state department such sums as may be necessary to carry out the provisions of this act.

History: En. Sec. 16, Ch. 167, L. 1955.

71-1415. Short title. This act may be cited as the "Services to the Blind Act" of Montana.

History: En. Sec. 17, Ch. 167, L. 1955.

#### TITLE 72

#### RAILROADS

Chapter 1. Railroads-regulation by board of railroad commissioners, 72-101 to 72-168.

2. Railroad companies—general powers and duties, 72-201 to 72-230.

- 3. Leases, sales and mortgages of railroad equipment and rolling stock, 72-301 to 72-307.
- 4. Liability of railroads for killing or injuring livestock, 72-401 to 72-411.
- Regulations concerning right of way fences and cattle guards, 72-501 to 72-506.
- 6. General regulation of business of railroads, 72-601 to 72-670.

7. Railroad crossings—regulation, 72-701 to 72-712.

### CHAPTER 1

#### RAILROADS—REGULATION BY BOARD OF RAILROAD COMMISSIONERS

- Section 72-101. Creation of commission.
  - 72-102. Oath and bond.
  - 72-103. Meetings of board—quorum—powers.
  - 72-104. Seal.
  - 72-105. Officers of board.
  - 72-106. Salaries.
  - 72-107. Expenses of board and employees.
  - 72-108. Salary of rate clerk.
  - 72-109. Salary of senior inspector.
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  - 72-112. Duties of secretary.
  - 72-113. Process to compel attendance and examination of witnesses.
  - 72-114. Definitions and terms.
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  - 72-116. Power of board to fix rates, schedules and classifications.
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  - 72-124. Attorney general as attorney for board.
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  - 72-129. Appeals to supreme court.
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  - 72-131. Time for commencement of action.
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  - 72-133. Action by shippers.
  - 72-134. Penalty for violation of law by railroad.
  - 72-135. Recovery of penalties and forfeitures.
  - 72-136. Acceptance of favors and gratuities from railroads prohibited.
  - 72-137. Annual reports from railroads.
  - 72-138. Annual report of the board.
  - 72-139. Duties of board—suspension of commission.

- 72-140. Existing rights of actions not affected by law.
- 72-141. Jurisdiction of railroad commission over docks and wharves.
- Railroad commission to inquire into observance of laws for safety of 72-142. employees.
- 72-143. Results to be stated in annual report.
- 72-144. Schedule of rates for transporting prisoners.
- 72-145. Maintenance of loading platform by railroad.
- 72-146. Dimensions and other requirements of platform.
- 72-147. 72-148. Enlargement of platform.
- Erection of scales.
- 72-149. Violation of law a misdemeanor—penalty.
- 72-150. Rules for equipment of cars, trains, engines, and health and sanitation.
- 72-151. Brake equipment.
- Industrial and commercial spurs-provisos.
- 72-152. 72-153. Proceedings in district court.
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- 72-155. Action to determine reasonableness of rule.
- 72-156. Powers of railroad commission as to stations and crossings.
- 72-157.
- "Paralleling" defined.

  Joint rates—division among carriers. 72-158.
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- 72-160. Enforcement of regulation in district court.
- 72-161. Appeals to supreme court.
- 72-162. Action to determine reasonableness of rule.
- 72-163. Penalty for failure of railroad to comply with regulations.
- 72-164. 72-165. Railroad commission may order electric signal bells installed. Petition for installation—hearing and order.
- 72-166. Construction and requirements of signal devices.
- 72-167. Time within which signaling device must be installed—limitation upon power of railroad commission.
- 72-168. Penalty for noncompliance with order of railroad commission.

Creation of commission. There is hereby created and established a board of railroad commissioners of the state of Montana, to be known as the "board of railroad commissioners of the state of Montana," said board to consist of three members who shall be qualified electors of the state. The first board of railroad commissioners shall be composed of the following persons, namely: B. T. Stanton of Gallatin county, Nathan Godfrey of Lewis and Clark county, and E. A. Morley of Silver Bow county. The persons named herein as commissioners shall serve until the first Monday of January, 1909, or until their successors are elected and qualified. At the general election to be held in November, 1908, there shall be elected three commissioners for said board, one for a term of two years, one for a term of four years, and one for a term of six years, and until their successors are elected and qualified. Said commissioners when elected will qualify at the time and in the manner provided by law for other state officers, and shall take office on the first Monday of January, next after their election. Each of said members of said board so elected shall serve until his successor is elected and qualified. Biennially thereafter, at the general election, one member shall be elected for a period of six years, and until his successor is elected and qualified, to succeed the member of such board whose term shall expire on the first day of January following. Any vacancy occurring in the board shall be filled by appointment by the governor, and such appointee shall hold office until the next general election, and until his successor is elected and qualified. At the biennial election following the occurrence of any vacancy in the board, there shall be elected one member to fill out the unexpired term for which such vacancy exists. No person in the employ of, or holding any official relations to any railroad, or owning any stocks, bonds, or other securities of any railroad, or who is or shall become in any manner pecuniarily interested in any railroad, or in any stocks, bonds, or other securities thereof, shall be a member of said board. Any member of said board who, after his election or appointment to office, or after his induction into office, shall become an employee of or holder of any official relation to any railroad, or who shall become an owner or holder of any stocks, bonds, or other securities of any railroad, or have or acquire any pecuniary interest in any stocks, bonds, or other securities of any railroad, shall forfeit his office, and the governor shall appoint a successor thereto as herein provided in case of a vacancy in said board. No commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest.

History: En. Sec. 1, Ch. 37, L. 1907; Sec. 4363, Rev. C. 1907; re-en. Sec. 3779, R. C. M. 1921.

#### Cross-References

Ex officio public service commission, sec. 70-102.

Motor carriers, regulation, sec. 8-101 et seq.

Pipelines, regulation, sec. 8-202 et seq. Public utilities, duties, sec. 70-101 et seq.

#### Constitutionality

The constitutionality of the creation of the railroad commission and the authority of the state, in the exercise of its police power for the preservation of the lives and property of its citizens, to place transportation by motor vehicles, trucks and buses, whether by common carrier or by individuals, under the supervision and control of such a commission are not here questioned. Similar action has been taken in practically every state of the Union and has been universally upheld. State v. Johnson, 75 M 240, 248, 243 P 1073.

#### Election of Railroad Commissioner

The office of railroad commissioner is one that is required to be filled by the voters at the general elections held biennially, and it is only when a vacancy occurs that a temporary appointment is authorized to stop the gap and permit the board to continue to function with three members until the electors are presented with their first opportunity to select the appointee's successor which opportunity is afforded under the law at the next general election held following the occurrence of the vacancy. State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 646.

#### Special Election to Fill Vacancy

There can be no special election to elect the governor's appointee's successor under this section, for the result of a special election could oust the governor's appointee prior to the next general election held next after such appointee's appointment and qualification. State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 647.

### Vacancy on Resignation of Commissioner

The time limitations prescribed in section 23-809 which provides the secretary of state shall certify to the various county clerks the names of persons nominated for election not less than 45 days nor more than 90 days before the election, has no application to an election to fill a vacancy created by the resignation of a regularly elected railroad commissioner where such commissioner defers and withholds the effective date of his resignation until but 32 days remain between such effective date and the day of the general election. State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 647.

The provisions of section 23-809, a general statute, are in conflict with the special provisions of this section, a special statute, which applies specifically and exclusively to the filling of vacancies occurring in the board of railroad commissioners of the state of Montana. State ex rel. Mitchell v. District Court, 128 M 325, 275 P 2d 642, 646.

#### References

State ex rel. Board of Railroad Commrs. v. District Court, 53 M 229, 231, 163 P 115; State ex rel. Boyle v. Hall, 53 M 595, 165 P 757; Doney v. Northern Pacific Ry. Co., 60 M 209, 227 et seq., 199 P 432; Montana Horse Products Co. v. Great Northern Ry. Co., 91 M 194, 7 P 2d 919.

#### Collateral References

Public Service Commissions. 3.
73 C.J.S. Public Utilities § 34.
44 Am. Jur. 248, Railroads, §§ 34-39.

72-102. (3780) Oath and bond. Each member of said board, and each person appointed to office by said board, before entering upon the duties of his office, shall take and subscribe the oath specified in section 1, article XIX, of the constitution of the state of Montana, and such oath shall be filed in the office of the secretary of state. The members of said board shall each give a bond to the state in the sum of five thousand dollars, with sureties to be approved by the governor, conditioned for the faithful discharge of the duties of their respective offices. The secretary of the board shall give a like bond in the sum of one thousand dollars.

History: En. Sec. 2, Ch. 37, L. 1907; NOTE.—Bonds are given as fixed by Sec. 4364, Rev. C. 1907; re-en. Sec. 3780, sec. 6-101.
R. C. M. 1921.

72-103. (3781) Meetings of board—quorum—powers. The office of the board shall be in the city of Helena, and said office shall always be open during business hours, legal holidays and nonjudicial days excepted. The board shall hold sessions at least once each month in the city of Helena, and at such other times and such other places within this state as may be expedient. The sessions of the board shall be public. A majority of the board shall constitute a quorum for the transaction of all business. The members of the board of railroad commissioners shall have the authority to administer oaths and affirmations. The board shall have power to adopt rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges, and other acts required of it under the law.

History: En. Sec. 3, Ch. 37, L. 1907; Sec. 4365, Rev. C. 1907; re-en. Sec. 3781, R. C. M. 1921. Collateral References

Public Service Commissions 9.
73 C.J.S. Public Utilities § 39 et seq.

#### References

State ex rel. Boyle v. Hall, 53 M 595, 602, 165 P 757.

72-104. (3782) Seal. The board shall have a seal, and such seal shall have the following words engraved thereon: "Board of Railroad Commissioners of the state of Montana," and said seal shall be affixed only to: First, writs; second, authentications of a record or other proceedings, or to a copy of a document on file in the office of the said board. The courts of this state shall take judicial notice of such seal.

History: En. Sec. 4, Ch. 37, L. 1907; Sec. 4366, Rev. C. 1907; re-en. Sec. 3782, R. C. M. 1921.

72-105. (3783) Officers of board. The board shall, immediately after its members have qualified, organize by electing one of its members as chairman, and shall appoint a secretary, who shall possess the same qualifications as members of said board, to serve during the pleasure of the board. Said board shall also have the power to appoint stenographers, inspectors, experts, and other persons whenever deemed expedient or necessary by said board to the proper performance of its duties.

History: En. Sec. 5, Ch. 37, L. 1907; R. C. M. 1921; rep. in part by Ch. 176, L. Sec. 4367, Rev. C. 1907; re-en. Sec. 3783, 1931.

#### Public Office

The chairmanship of the state board of railroad commissioners is not a public office, and the writ of quo warranto does not lie to determine the right of one of its members to act as chairman. State ex rel. Boyle v. Hall, 53 M 595, 601, 165 P 757.

#### References

State ex rel. Barney v. Hawkins, 79 M 506, 524, 257 P 411, 53 ALR 583.

#### Collateral References

Public Service Commissions 3. 73 C.J.S. Public Utilities § 35.

72-106. (3784) Salaries. The salary of each commissioner shall be five thousand dollars per annum; the salary of the secretary shall be three thousand dollars per annum; and the salary of the stenographer employed by the board shall be fifteen hundred dollars per annum. The salaries of the persons so employed shall be paid as other expenses of the board are paid. The salaries of the commissioners and secretary shall be paid from the state treasury in equal quarterly payments, payable April 1st, July 1st, October 1st, and January 1st.

History: En. Sec. 6, Ch. 37, L. 1907; Sec. 4368, Rev. C. 1907; re-en. Sec. 3784, R. C. M. 1921.

NOTE.—See also sec. 70-118. Salary of railroad commissioner is now \$8,000 as provided by Laws 1959, Ch. 202, Sec. 1

(25-501) which was substituted for Laws 1949, Ch. 182, Sec. 1 (former 25-501) which was repealed by Sec. 3, Ch. 202, Laws 1959.

#### Collateral References

Public Service Commissions 5. 73 C.J.S. Public Utilities § 36.

72-107. (3785) Expenses of board and employees. Said commissioners and the persons in their official employ, when traveling in the performance of their official duties, shall have a right to free transportation, and to have their actual and necessary traveling expenses paid, the amounts to be passed on by the state board of examiners and paid as other expense of the board. The state shall furnish said board with suitable offices in the state capitol building at Helena, Montana, and provide it with all necessary furniture, stationery, and printing, upon requisitions signed by the chairman of said board.

History: En. Sec. 7, Ch. 37, L. 1907; Sec. 4369, Rev. C. 1907; re-en. Sec. 3785, R. C. M. 1921.

#### Free Transportation

Members and employees of the railroad commission should be allowed to ride free

only when traveling on official business. John v. Northern Pacific Ry. Co., 42 M 18, 61, 111 P 632.

#### References

State ex rel. Boyle v. Hall, 53 M 595, 602, 165 P 757.

72-108. (3786) Salary of rate clerk. The annual salary of the rate clerk of the railroad commission shall be three thousand dollars per annum.

History: En. Sec. 1, Ch. 109, L. 1919; re-en. Sec. 3786, R. C. M. 1921.

#### Compiler's Note

Compensation of assistants to state officers is designated by the state board of examiners under Sec. 1, Ch. 30, Laws 1943, as amended (59-901).

**72-109.** (3787) **Salary of senior inspector.** The salary of the senior inspector appointed by, and working under, the board of railroad commissioners of the state of Montana shall be, and the same is hereby fixed at, the sum of two thousand five hundred dollars (\$2,500.00) per annum, payable monthly.

72-110 RAILROADS

History: En. Sec. 2, Ch. 109, L. 1919; re-en. Sec. 3787, R. C. M. 1921; amd. Sec. 1, Ch. 90, L. 1927. Collateral References
Public Service Commissions 5.
73 C.J.S. Public Utilities § 36.

72-110. (3788) Salary of stenographer. The annual salary of the stenographer shall be fifteen hundred dollars per annum.

History: En. Sec. 3, Ch. 109, L. 1919; re-en. Sec. 3788, R. C. M. 1921.

72-111. (3789) Allowance for postage, expressage and other incidental expenses. Said board shall also be allowed the sum of one thousand dollars per annum for postage, expressage, and other incidental expenses. The accounts for payments authorized by this section shall be paid only when audited by the state board of examiners, and the board shall file, with its vouchers for such payments, a statement, verified by a member of the board, showing the names of all persons employed and the purpose for which they were employed, and the work performed by them.

History: En. Sec. 8, Ch. 37, L. 1907; Sec. 4370, Rev. C. 1907; re-en. Sec. 3789, R. C. M. 1921. References
State ex rel. Boyle v. Hall, 53 M 595, 602, 165 P 757.

72-112. (3790) Duties of secretary. The secretary shall keep a full and complete record of all proceedings of the board, and be the custodian of its records, and file and preserve at the office of the board all books, maps, documents, and papers entrusted to his care, and be responsible to the board for the same. He shall perform such other duties as the board may prescribe.

History: En. Sec. 9, Ch. 37, L. 1907; Sec. 4371, Rev. C. 1907; re-en. Sec. 3790, R. C. M. 1921.

72-113. (3791) Process to compel attendance and examination of witnesses. The process issued by said board shall be under seal and extend to all parts of the state. Said board shall have power to issue process in like manner as courts of record. Such process may be served by any person authorized to serve process of courts of record, or by any person appointed by the board for such purpose. In the event the process issued by the board is a subpoena for the attendance of a witness, and he shall have failed, neglected, or refused to obey the same, the board is hereby authorized to file a petition with any district court in the state, setting up the facts and the necessity of having such witness appear in such trial, and the court shall thereupon summarily direct that a subpoena be issued out of the court requiring the attendance of any person or persons as a witness before the court; and the board shall thereupon have the power and authority to examine such witness before said court, under oath, respecting any inquiry or investigation being made by said board, under and pursuant to the provisions of this act. The court shall likewise, when any petition is filed stating the necessity therefor, order the production by any person or corporation, for examination in said court, of any books, papers, records, or files necessary or pertinent to any inquiry or investigation then being made by said board.

History: En. Sec. 10, Ch. 37, L. 1907; Sec. 4372, Rev. C. 1907; re-en. Sec. 3791, R. C. M. 1921.

Collateral References

Public Service Commissions 59.
73 C.J.S. Public Utilities § 32 et seq.

72-114. (3792) Definitions and terms. The provisions of this act shall apply to the transportation of passengers and property between points within this state, and to the receiving, switching, delivering, storing, and handling of such property, and to all charges connected therewith, and shall apply to railroad companies, express companies, car companies, sleeping-car companies, freight and freight-line companies, and to any shipments of property made from any point within this state to any other point within this state, whether the transportation of the same shall be wholly within this state, or partly within this state and partly within an adjoining state or states. The term "transportation" shall include all instrumentalities of shipment or carriage. The term "railroad" shall be taken to mean any corporation, company, or individual owning or operating any railroad, in whole or in part, in this state. It shall also include express companies and sleepingcar companies. The term "board" in this act shall be taken to mean the board of railroad commissioners of the state of Montana. The provisions of this act shall apply to all persons, firms, or companies, incorporated or otherwise, that shall do business as common carriers upon any of the lines of railroad in this state.

History: En. Sec. 11, Ch. 37, L. 1907; Sec. 4373, Rev. C. 1907; re-en. Sec. 3792, R. C. M. 1921. Collateral References Carriers \$2. 13 C.J.S. Carriers \$148.

72-115. (3793) "Railroad" defined. The word "railroad," whenever used in this act shall be held to mean and include railroad companies, express companies, car companies, sleeping-car companies, freight and freight-line companies, and all common carriers.

History: En. Sec. 12, Ch. 37, L. 1907; Sec. 4374, Rev. C. 1907; re-en. Sec. 3793, R. C. M. 1921. Collateral References Carriers \$\infty\$-4. 13 C.J.S. Carriers \$ 148.

#### References

Crowley v. Polleys Lumber Co., 92 M 27, 34 et seq., 9 P 2d 1068.

72-116. (3794) Power of board to fix rates, schedules and classifications. The power and authority is hereby vested in the said board, and it is hereby made its duty to adopt, as soon as practicable after the organization of the board, all necessary rates, charges, and regulations to govern and regulate freight and passenger tariffs, to correct abuses, and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state, and to make the same effective by enforcing the penalties prescribed in this act. The said board shall have the power, and it shall be its duty, to fairly and justly classify and subdivide all freight and merchandise of whatsoever character that may be transported over railroads of this state, into such general and special classes or subdivisions as may be deemed necessary or expedient. The said board may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines, if found neces-

sary to do justice, and may make rates for express companies different from the rates fixed for railroads. Said board shall also have the power, and it shall be its duty, to fix and establish for all or any connecting lines of railroad in this state reasonable joint rates of freight charges for the various classes of freight, and cars that may pass over two or more lines of such railroads.

The rates, tolls, or charges on any property, which shall for any reason remain unclassified by the board, shall not in any event exceed the highest rates fixed for any classification by said board. And it shall be within the province of the board to entertain and hear complaints made by any shipper to the effect that unjust discrimination is being made as against the state of Montana, or any point therein, in the way of rates for the transportation of freight or passengers from points without the state to points within the state, and vice versa; and in proper cases, where it appears that the United States interstate commerce commission law has been violated, it is hereby made the duty of said board to make complaint to the interstate commerce commission of the United States, and to aid such commission in any investigation it may make concerning violations of the United States law, by furnishing evidence, and in any other manner which may seem best suited to enforce both the United States and state law, and to protect the interests of the people.

History: En. Sec. 13, Ch. 37, L. 1907; Sec. 4375, Rev. C. 1907; re-en. Sec. 3794, R. C. M. 1921.

#### Complaint

Since the presumption obtains that the railroad commission fixed and established reasonable rates in obedience to this section, and that the rate as established is in accordance with the approved and published tariff, a complaint which fails to allege that freight charges were not in accordance with such tariff is defective. Doney v. Northern Pacific Ry. Co., 60 M 209, 227 et seq., 199 P 432, explained in 91 M 194, 203, 7 P 2d 919 and 91 M 216, 220, 7 P 2d 927.

#### Established Tariff Has Effect of Statute

A tariff duly filed and published by the railroad commission has the force and effect of a statute and is binding alike upon the shipper and carrier, until modified by the tribunal authorized to change it. Doney v. Northern Pacific Ry. Co., 60 M 209, 227 et seq., 199 P 432, explained in 91 M 194, 203, 7 P 2d 919 and 91 M 216, 220, 7 P 2d 927.

#### Exclusive Remedy

The remedies prescribed by the Railroad Commission Act for the recovery of damages caused by the exaction of discriminatory or unreasonable freight charges are exclusive and a complaint based upon the common-law remedy and drawn in entire disregard of the provisions of the statute did not state a cause

of action, the common-law remedies having been superseded by said chapter. Doney v. Northern Pacific Ry. Co., 60 M 209, 227 et seq., 199 P 432, explained in 91 M 194, 203, 7 P 2d 919 and 91 M 216, 220, 7 P 2d 927.

#### Powers Distinguished from I. C. C.

While under the Interstate Commerce Act railroad rates are voluntary, initiated and filed by the carriers, under the Montana act the rates are prescribed or approved by the state board of railroad commissioners. Montana Horse Products Co. v. Great Northern Ry. Co., 91 M 194, 199, 7 P 2d 919.

#### Rates Cannot Be Changed Retroactively

Under the Railroad Commission Act creating, and prescribing the duties of, the board of railroad commissioners, the board has no authority to make a retroactive order to the effect that rates (previously approved by the board) charged and collected on a shipment of livestock, were unjust and unreasonable, thus permitting the shipper to recover the difference between the amount collected and that subsequently found by the board to be a reasonable rate, the board's powers being limited to the changing or modification of existing rates as to the future (Language in Doney v. Northern Pacific Ry. Co., 60 M 209, 199 P 432, inconsistent with the above holding and at variance with the correct conclusion announced therein, overruled.) Montana Horse Products Co. v. Great Northern Ry. Co., 91 M 194, 199, 7 P 2d

919. Decision affirmed in Sunburst O. & R. Co. v. Great Northern Ry. Co., 91 M 216, 7 P 2d 927 and 287 U S 358, 77 L Ed 360, 53 S Ct 145.

#### Rates in General

Determination whether a shipper has in the past been wronged by the exaction of an unreasonable or discriminatory rate is a judicial act, while determination as to what rate shall be charged in the future is legislative or administrative. Montana Horse Products Co. v. Great Northern Ry. Co., 91 M 194, 199, 7 P 2d 919.

Under the provisions of the Railroad Commission Act, a carrier is prohibited from collecting rates either higher or lower than those fixed by the state board of railroad commissioners. Montana Horse Products Co. v. Great Northern Ry. Co., 91 M 194, 199, 7 P 2d 919.

A voluntary reduction of a rate by a carrier, with the consent of the board of railroad commissioners, does not make the prior rate unlawful, unreasonable or discriminatory or the basis of an action for damages. Montana Horse Products Co. v. Great Northern Ry. Co., 91 M 194, 199, 7 P 2d 919.

So long as railroad rates established by the state railroad commission are in force, they are presumed to be reasonable, and neither the commission nor the courts have power retroactively to declare such rates unreasonable, and thus permit re-covery of damages to the extent of the overplus paid by a shipper or an under-charge collected by the carrier. Montana Horse Products Co. v. Great Northern Ry. Co., 91 M 194, 199, 7 P 2d 919.

Great Northern Ry. Co. v. Melton, 193 F 2d 729, 733.

#### Collateral References

Carriers 12(1). 13 C.J.S. Carriers §§ 397, 582. 9 Am. Jur., Carriers, p. 467, §§ 61 et seq.; p. 505, §§ 106 et seq.

Consideration of body of rates in determining the reasonableness of carrier's rates on a particular commodity. 15 ALR 185.

Carrier's right or liability in respect of excess of lawful charge over charge understated where discrimination is forbidden. 83 ALR 245.

Right to maintain action against carrier on the ground of excessiveness of rates filed and published by carrier pursuant to law. 97 ALR 420.

Shipper's right against carrier in respect of service charges not included as required by statute, in the tariff filed. 103 ALR 1373.

72-117. (3795) Making schedules effective. When any schedules shall have been made or revised, it shall be the duty of said commissioners to cause notice thereof to be published for two successive weeks in some newspaper published in the city of Helena, which notice shall state the date of taking effect of said schedule, and said schedule shall take effect at the time so stated in such notice, and a printed notice of such schedule shall be conspicuously posted by such common carrier in each freight office and passenger depot upon its lines; provided, that before finally fixing and deciding what the original maximum rates and classifications shall be, it shall be the duty of the railroad commissioners to publish ten days' notice in two daily papers, one of which is published in the city of Helena, setting forth in such notice that at a certain time and place they will proceed to fix and determine such maximum rates and classifications; and they shall at such time and place, and as soon as practicable, afford to any person, firm, corporation, or common carrier who may desire it, an opportunity to make an explanation or showing, or to furnish information to said railroad commissioners on the subject of determining and fixing such maximum rates and classifications.

All classifications and rates fixed and established by the board shall become effective twenty days after the railroad affected thereby shall have received certified copies thereof from said board. Each railroad affected by the provisions of this act shall display, in a conspicuous place in each of its stations in this state, a schedule printed in plain, legible, English type, showing all classifications and rates fixed and established by the said board. Any failure or refusal on the part of any railroad to comply with the provisions of this section shall subject such railroad to a penalty of not less than one hundred dollars nor more than five hundred dollars for each day that such failure or neglect is continued.

History: En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R. C. M. 1921. Collateral References

Carriers 12(11). 13 C.J.S. Carriers §§ 283, 582.

#### Cross-Reference

Employees receiving illegal fares, sec. 94-1613.

(3796) Power to alter classification or rate—hearing complaint. 72-118. The said board shall have the power from time to time to change, alter, amend, or abolish any classification or rate established by it when deemed necessary, and such amended, altered, or new classifications or rates shall be put into effect in the same manner as original classifications or rates. The said board shall make and establish reasonable rates for the transportation of passengers over each and all of the railroads subject hereto, and shall prescribe rates, tolls, and charges for all other services performed by any railroad subject hereto. The said board shall not make or establish any increase or raise in the rate of charge for the transportation of freight by any railroad within the state of Montana, unless ten days' notice be published in two daily papers, one of which shall be published in the city of Helena, setting forth in said notice that at a certain time and place the board will proceed to make and establish such increase or raise in the rate of charge for the transportation of freight; and the board shall at such time and place hold a public hearing thereon, at which time and place the public generally, or any person, firm, or corporation, shall be given an opportunity to present such facts, information, or statistics as shall be pertinent to the hearing then being held. The said board must, within forty days after the filing with such board of a complaint by a shipper, or other person interested, proceed to investigate and determine the justness and reasonableness of any classification, rate, charge, toll, regulation or order made by said board.

History: En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R. C. M. 1921.

## Board without Power to Change Freight Rates Retroactively

Under this chapter, creating and prescribing the duties of, the board of railroad commissioners, the board has no authority to make a retroactive order to the effect that rates (previously approved by the board) charged and collected on a shipment of livestock, were unjust and unreasonable, thus permitting the shipper to recover the difference between the amount collected and that subsequently found by the board to be a reasonable rate, the board's powers being limited to the changing or modification of existing rates as to the future. (Language in Doney v. Northern Pacific Ry. Co., 60 M

209, 199 P 432, inconsistent with the above holding and at variance with the correct conclusion announced therein, overruled.) Montana Horse Products Co. v. Great Northern Ry. Co., 91 M 194, 7 P 2d 919. Decision affirmed in Sunburst O. & R. Co. v. Great Northern R. Co., 91 M 216, 7 P 2d 927 and 287 U S 358, 77 L Ed 360, 53 S Ct 145.

#### Change in Rates

Advantage, preference or discrimination standing alone is not sufficient justification for interference with intrastate rates. It is only undue or unreasonable advantage, preference or prejudice, or undue unreasonable or unjust discrimination that justifies intervention by the interstate commerce commission. Montana Citizens F. R. Assn. v. Board of Railroad Commrs., 128 M 127, 271 P 2d 1024, 1030.

### Disparity between Interstate Rates and Intrastate Rates

The consequences of an intrastate rate increase by the state board are quite different from the standpoint of a shipper from an interstate rate increase by the interstate commerce commission. The reason for this difference is that the interstate commerce commission has the power and authority to declare a rate unreasonable or discriminatory retroactively and to compel reparation to a shipper who has paid freight charges in excess of a reasonable rate. The state board has no such authority. Consequently, the state board should require independent proof on matters essential to warrant an increase in intrastate rates and charges and should not assume that the intrastate rate was properly related to the interstate rate prior to the change made in the latter and that to maintain this relationship the intrastate rate had to be increased exactly the same as the interstate rate. Montana Citizens F. R. Assn. v. Board of Railroad Commrs., 128 M 127, 271 P 2d 1024, 1027. The state board has no authority to

The state board has no authority to grant an automatic raise in intrastate rates simply because the interstate commerce commission had granted a raise in interstate rates. The mere disparity between the interstate rates and the intrastate rates does not compel the state board to grant an increase so as to remove the disparity. Montana Citizens F. R. Assn. v. Board of Railroad Commrs., 128 M 127, 271 P 2d 1024, 1027.

#### Hearing Complaint

A shipper deeming himself aggrieved by a rate fixed by the railroad commission because unjust, unreasonable or discriminatory, must proceed under section 72-133, if he desires to have it declared so; where no rate has been fixed or the one established is considered excessive, he must apply to the commission for investigation and determination of his contention, under this section, before he can maintain an action in the courts; and if his case is predicated upon freight charges made in excess of those fixed and established by the commission, his complaint must so allege and the action must be brought within twelve months from the date of payment, under section 72-130. Doney v. Northern Pacific Ry. Co., 60 M 209, 227 et seq., 199 P 432, explained in 91 M 194, 203, 7 P 2d 919 and 91 M 216, 220, 7 P 2d 927.

72-119. (3797) General powers of board. The board shall have the general supervision of all railroads, express companies, car companies, sleeping-car companies, freight and freight-line companies, and any common carrier engaged in the transportation of passengers or property in this state, in all matters appertaining to the duty of said board and within its power and authority under the provisions of this act; and shall investigate any alleged neglect or violation of the laws of the state by any railroad or other company above specified doing business therein, or by the officers, agents, or employees thereof. The board shall also have the power and authority, and it shall be its duty, to examine and inspect, or cause to be examined and inspected, under its authority, all books, records, files, and papers of the persons and companies specified above, in so far as the same may be pertinent to any matter under investigation before said board, and to hear and take testimony in the progress of any inquiry or investigation authorized by this act.

History: En. Sec. 16, Ch. 37, L. 1907; Sec. 4378, Rev. C. 1907; re-en. Sec. 3797, R. C. M. 1921.

#### References

Doney v. Northern Pacific Ry. Co., 60 M 209, 227 et seq., 199 P 432; State v. Johnson, 75 M 240, 248, 243 P 1073; Great Northern Ry. Co. v. Board of Railroad

Commrs., 130 M 250, 298 P 2d 1093, 1094, appeal dismissed in 352 U S 904, 1 L Ed 2d 114, 77 S Ct 146.

#### Collateral References

Carriers \$\ 15, 16, 19.

13 C.J.S. Carriers \$\ 15, 16, 19.

44 Am. Jur. 250, Railroads, \ 36.

72-120. (3798) Investigation into accidents. The said board, or some members thereof to be deputed by it, shall investigate and make inquiry

into every accident occurring in the operation of any railroad in this state, resulting in death, or injury to any person of such gravity as to require the attention of a physician or surgeon, or in the destruction of property greater in value than two thousand dollars. The testimony taken on any such hearing shall be transcribed and filed in the office of the board.

History: En. Sec. 16a, Ch. 37, L. 1907; Sec. 4379, Rev. C. 1907; re-en. Sec. 3798, R. C. M. 1921. Collateral References
Railroads \$\infty 9(1).
74 C.J.S. Railroads \\$ 29.

72-121. (3799) Duty of railroad company to report accidents. It is hereby made the duty of every railroad company operating any line of railroad within this state, promptly upon the occurrence or in connection with the operation of its line within the state, of any accident such as is mentioned in the next preceding section, to report the same to the board of railroad commissioners, in which report shall be stated the time and place of the accident, the names of the persons killed or injured, and the value of any property destroyed.

History: En. Sec. 17, Ch. 37, L. 1907; Sec. 4380, Rev. C. 1907; re-en. Sec. 3799, R. C. M. 1921.

Collateral References Railroads \$\sim 250. 74 C.J.S. Railroads § 436 et seq.

72-122. (3800) Witnesses—compensation—immunity. The said board, in making any examination or investigation provided for in this act, shall have the power to issue subpoenas for the attendance of witnesses, by such rules as it may prescribe. Each witness shall receive the sum of three dollars per day, together with the sum of five cents per mile traveled by the nearest practicable route in going to and returning from the place of meeting of said commission. And no witness furnished with free transportation shall receive mileage for the distance he may have traveled on such free transportation. No person shall be excused from attending or testifying, or producing any books, papers, documents, or any thing or things, before any court or magistrate, or commissioner or board, upon any investigation, proceeding or trial under the provisions of this act, or for any violation of any of them, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to convict him of a crime, or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify, or produce evidence; and no testimony or evidence so given or produced shall be received against him upon any civil or criminal proceeding, action, or investigation.

History: En. Sec. 18, Ch. 37, L. 1907; Sec. 4381, Rev. C. 1907; re-en. Sec. 3800, R. C. M. 1921. Collateral References
Railroads \$\infty\$ 9(1).
74 C.J.S. Railroads \ 29.

72-123. (3801) Power to compel railroad companies to provide adequate accommodations and service. The board shall have the power, and it shall be its duty, to compel any and all railroads subject hereto, to provide, maintain, and operate sufficient train service, both freight and passenger, for the proper and reasonable accommodation of the public, and to provide and

maintain suitable waiting rooms for passengers, and suitable rooms for freight and baggage at all stations.

History: En. Sec. 19, Ch. 37, L. 1907; Sec. 4382, Rev. C. 1907; re-en. Sec. 3801, R. C. M. 1921.

#### Discontinuance of Service

An order of the board that there should be no curtailment or discontinuance of passenger train service between points within the state except where authorized by commission is valid under the statute and in line with authorities that a public utility may not discontinue its service without approval of the public service commission. Great Northern Ry. Co. v. Board of Railroad Commrs., 130 M 250, 298 P 2d 1093, 1094, appeal dismissed in 352 U S 904, 1 L Ed 2d 114, 77 S Ct 146. (Dissenting opinion, 130 M 250, 298 P 2d 1093, 1095.)

Railroad was not authorized to discontinue railway service between points within Montana without permission of the commission, although in an earlier petition

by the railroad to discontinue such service the commission had ruled it had no jurisdiction. The erroneous ruling of the board that it had no jurisdiction over proceedings to abandon the service so far as it affected intrastate transportation did not justify the railroad in removing the trains. That order was subject to review and the obligation to have that order reviewed rested on the railway company as a necessary step to procure the consent of the board for the abandonment of the train service. Great Northern Ry. Co. v. Board of Railroad Commrs., 130 M 250, 298 P 2d 1093, 1095, appeal dismissed in 352 U S 904, 1 L Ed 2d 114, 77 S Ct 146. (Dissenting opinion, 130 M 250, 298 P 2d 1093, 1095.)

#### Collateral References

Railroads \$217, 218. 74 C.J.S. Railroads §§ 406, 416.

(3802) Attorney general as attorney for board. The attorney 72-124. general is hereby constituted the attorney and counselor of said board, and the county attorney of every county in the state shall, on the request and at the direction of the attorney general, assist in all cases, proceedings, and investigations undertaken by said board under this law, in his own county; provided, that said board shall have power and authority to employ special counsel, with the consent and approval of the attorney general, to assist in any case, matter, proceeding, or investigation instituted under this law. It is hereby made the duty of the attorney general, upon direction of said board, and of the county attorney of each county in this state, upon direction of the attorney general, to institute and prosecute, and to appear and defend, any action or proceeding arising under the provisions of this law. All suits and proceedings filed in any court of this state, under the provisions of this law, shall have precedence over all other business in such court, save and except criminal business and original proceedings in the supreme court. The fees and expenses of additional counsel shall be fixed and determined by the state board of examiners, and allowed and paid as items of expense the same as other items of expense of said board of railroad commissioners.

History: En. Sec. 20, Ch. 37, L. 1907; Sec. 4383, Rev. C. 1907; re-en. Sec. 3802, R. C. M. 1921.

#### References

State ex rel. Board of Railroad Commrs. v. District Court, 53 M 229, 232, 163 P 115; State v. Board of Railroad Commrs., 73 M 1, 4, 234 P 834; State ex rel. Olsen v.

Public Service Commission, 131 M 104, 308 P 2d 633, 639.

#### Collateral References

Attorney General 6; District and Prosecuting Attorneys 8.

7 C.J.S. Attorney General §§ 5, 6; 27 C.J.S. District and Prosecuting Attorneys § 12(1).

**72-125.** (3803) Court review of action of board—pleadings. Actions to review the determination of the board fixing any classification, rate, toll, charge, regulation, or order, or the refusal of said board to make, fix, or

establish any classification, rate, toll, charge, regulation, or order, shall be commenced in the district court of the county having jurisdiction thereof by the filing of a complaint, duly verified as provided for the verification of pleadings in civil actions, and notice may be served upon the party defendant, either by summons issued and served as provided for in this code in civil actions, or the court may issue an order directed to the defendant requiring him to answer the complaint at such time as the court may deem reasonable; provided, however, that such time shall not be less than five days from the time of the service of such order. Upon the appearance of the defendant, he may deny or admit the facts set forth in said complaint, by answer, which shall be verified as the pleadings in other civil actions. If, upon the hearing, the court shall find that the rates fixed or the classifications made are unjust and unreasonable, it shall thereupon be the duty of said board to make new rates or a reclassification, as the case may be. All orders or notices required under the provisions of this section may be issued by the court, or by the judge thereof at chambers.

History: En. Sec. 21, Ch. 37, L. 1907; Sec. 4384, Rev. C. 1907; re-en. Sec. 3803, R. C. M. 1921.

#### Cross-Reference

Application of Montana Rules of Civil Procedure to this section, sec. 93-2711-7.

#### Obligation to Review

Where the board ruled that it had no jurisdiction in acting on a railroad's petition to discontinue service, the railroad was not authorized to discontinue such service between points within the state without the consent of the commission. The order was subject to review and the obligation to have that order reviewed rested on the railway company, as a necessary step to procure the consent of the board for the abandonment of the train service. Great Northern Ry. Co. v. Board of Railroad Commrs., 130 M 250, 298 P 2d

1093, 1095, appeal dismissed in 352 U S 904, 1 L Ed 2d 114, 77 S Ct 146. (Dissenting opinion, 130 M 250, 298 P 2d 1093, 1095.)

#### References

State ex rel. Board of Railroad Commrs. v. District Court, 53 M 229, 232, 163 P 115; Doney v. Northern Pacific Ry. Co., 60 M 209, 227 et seq., 199 P 432; State v. State Board of Railroad Commrs., 73 M 1, 5, 234 P 834; State v. Johnson, 75 M 240, 248, 243 P 1073; Montana Horse Products Co. v. Great Northern Ry. Co., 91 M 194, 7 P 2d 919; Montana Citizens F. R. Assn. v. Board of Railroad Commrs., 128 M 127, 271 P 2d 1024, 1027.

#### Collateral References

Carriers \$\infty\$=18(2).
13 C.J.S. Carriers \$\\$24, 284, 304, 307, 309, 310, 352, 584.

72-126. (3804) Prohibition against rebates and discrimination. If any railroad subject hereto, directly or indirectly or by any special rate, rebate, drawback, or other device, shall charge, demand, or receive from any person, firm, or corporation, a greater or less compensation for any service rendered, or to be rendered, in the transportation of property subject to the provisions of this act, than that fixed by the said board of railroad commissioners for such service, such railroad shall be deemed guilty of extortion, and shall forfeit and pay to the state of Montana not less than five hundred dollars nor more than two thousand dollars for each offense; provided, that nothing herein shall be so construed as to prevent any railroad or railroad corporation from giving excursion rates to or from any point within or without the state.

History: En. Sec. 22, Ch. 37, L. 1907; Sec. 4385, Rev. C. 1907; re-en. Sec. 3804, R. C. M. 1921. Collateral References Carriers ≈21(2). 13 C.J.S. Carriers §§ 517, 587. 72-127. (3805) Discrimination in rates and charges. If any railroad subject to this act, or its agents or officers, shall hereafter collect, charge, demand, or receive from any person, company, firm, or corporation, a greater rate, charge, or compensation than that fixed and established by the said board of railroad commissioners for the transportation of freight, passenger, or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling, or storing any such freight car, or for any other service performed, or to be performed by it, such railroad and its agents and officers shall be deemed guilty of extortion, and shall forfeit and pay to the state of Montana a sum not less than five hundred dollars nor more than two thousand dollars.

History: En. Sec. 23, Ch. 37, L. 1907; Sec. 4386, Rev. C. 1907; re-en. Sec. 3805, R. C. M. 1921.

#### Collateral References

9 Am. Jur. 556, Carriers, §§ 202 et seq.

Discrimination by carrier between shippers as to use of right of way. 44 ALR 1526.

Carrier's right or liability in respect of excess of lawful charge over charge understated where discrimination is forbidden. 83 ALR 245.

Waiver of rights by carrier under interstate shipments as constituting unlawful discrimination among shippers. 135 ALR 611

72-128. (3806) Jurisdiction to enforce orders of board. The district court shall have jurisdiction to enforce, by proper decree, injunction or order, the rates, classifications, rulings, orders, and regulations made or established by the commission. The proceeding therefor shall be by equitable action in the name of the state, and shall be instituted by the attorney general or county attorney, whenever advised by the board that any railroad is violating or refusing to comply with any rule, order, rate, classification, or regulation made by the commission and applicable to such railroad. Such proceedings shall have precedence over all other business in such courts, except criminal business.

In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order, regulation, rate, or classification involved is unreasonable and unjust as to them. If, in such action, it be the decision of the court that the rule, regulation, order, rate, or classification is not so unreasonable or unjust, and that in refusing compliance therewith the railroad is thereby failing or omitting the performance of any duty, debt, or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to and compliance with the rule, regulation, order, rate, or classification by the defendant, and its officers, agents, servants, and employees, and may grant such other relief as may be deemed just and proper. Any violation of such decree shall render the defendant and officer, agent, servant or servants, or employee of the defendant, who is in any manner instrumental in such violation, guilty of contempt, and shall be punishable by a fine not exceeding one thousand dollars for each offense, or by imprisonment of the person guilty of contempt until he shall sufficiently purge himself therefrom, and such decree shall continue and remain in effect and be in force until the rule, regulation, order, rate, or classification shall be modified or vacated by the board; provided, however, that nothing herein contained shall be construed to deprive either party to such proceedings of the right to trial by

jury, as provided by the seventh amendment to the constitution of the United States, or as provided by the constitution of this state. An appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court.

History: En. Sec. 24, Ch. 37, L. 1907; Sec. 4387, Rev. C. 1907; re-en. Sec. 3806, R. C. M. 1921.

#### Compiler's Note

The word "the" which followed the word "have," in the last sentence of the first paragraph, was omitted by the compiler.

#### Operation and Effect

Section 8-114 must be construed with this section, and, the former being a later enactment, modifies this section so that the board of railroad commissioners could maintain action to enjoin motor carrier from operating motor vehicles over state highways until motor carrier complied

with provisions of Motor Carriers Act. Board of Railroad Commrs. v. Aero Mayflower Transit Co., 119 M 118, 172 P 2d 452, 455. (Affirmed by U. S. Supreme Court Dec. 8, 1947, 332 U S 495, 92 L Ed 99, 68 S Ct 167.)

#### References

State ex rel. Board of Railroad Commrs. v. District Court, 53 M 229, 232, 163 P 115.

#### Collateral References

Carriers 18(6).
13 C.J.S. Carriers §§ 24, 284, 304, 306, 309, 310, 390, 391, 584.
44 Am. Jur. 251, Railroads, § 38.

72-129. (3807) Appeals to supreme court. Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of this act; such appeals shall have precedence over all other business, except criminal business and original proceedings in such court, and shall be heard and determined as are appeals in civil actions.

History: En. Sec. 25, Ch. 37, L. 1907; Sec. 4388, Rev. C. 1907; re-en. Sec. 3807, R. C. M. 1921.

#### References

Montana Horse Products Co. v. Great Northern Ry. Co., 91 M 194, 201, 7 P 2d 919.

#### Collateral References

Carriers 18(1).
13 C.J.S. Carriers §§ 24, 284, 304, 307, 309, 310, 352, 584.

(3808) Actions to recover excess charges. Any sum or amount of money paid to any railroad by any person or shipper in excess of the rates, tolls, or charges fixed and established by the board for such service, may be recovered from such railroad by the person or shipper in any action instituted and maintained in the district court of the county in which such payment was made, provided such action shall be brought within three years from the date of such payment. No contract or agreement, written or otherwise, between such person or shipper and the said railroad, shall be admissible in evidence for the purpose of showing a waiver of the right given by this section. No voluntary payment by any person or shipper of any such excess or overcharge to any railroad shall be, or held to be, a waiver on the part of such person or shippers of the right to sue and recover for such excess or overcharge, as provided for in this section. If, upon the trial of such action, it shall satisfactorily appear to the court or jury that such overcharge was willfully made, the person or shipper bringing the said action shall be awarded damages in treble the amount of such excess or overcharge, together with the costs and expenses of such action, including

a reasonable attorney's fee, to be taxed and collected as other costs in the action.

History: En. Sec. 26, Ch. 37, L. 1907; Sec. 4389, Rev. C. 1907; re-en. Sec. 3808, R. C. M. 1921; amd. Sec. 1, Ch. 155, L. 1925.

### Board without Power to Change Freight Rates Retroactively

Under this chapter, creating and prescribing the duties of, the board of railroad commissioners, the board has no authority to make a retroactive order to the effect that rates (previously approved by the board) charged and collected on a shipment of livestock, were unjust and unreasonable, thus permitting the shipper to recover the difference between the amount collected and that subsequently found by the board to be a reasonable rate, the board's powers being limited to the changing or modification of existing rates as to the future. (Language in Doney v. Northern Pacific Ry. Co., 60 M

209, 199 P 432, inconsistent with the above holding and at variance with the correct conclusion announced therein, overruled.) Montana Horse Products Co. v. Great Northern Ry. Co., 91 M 194, 7 P 2d 919. Decision affirmed in Sunburst O. & R. Co. v. Great Northern R. Co., 91 M 216, 7 P 2d 927 and 287 U S 358, 77 L Ed 360, 53 S Ct 145.

#### Jurisdictional Allegation

Under this section an allegation that payment of alleged discriminatory or unreasonable freight charges was made in the county in which the action is brought is jurisdictional. Doney v. Northern Pacific Ry. Co., 60 M 209, 227, 199 P 432.

#### Collateral References

Carriers 202.
13 C.J.S. Carriers §§ 323, 387.

72-131. (3808.1) Time for commencement of action. All actions at law by carriers subject to this act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues and not after.

History: En. Sec. 2, Ch. 155, L. 1925.

#### Collateral References

Carriers ≈ 196. 13 C.J.S. Carriers §§ 318, 347.

72-132. (3809) Action to determine reasonableness of rates or classification. Any railroad may bring an action in the district court of the county where the principal office or place of business is situated, or in any county where any such classification, rate, toll, charge, regulation, or order of the board is applicable, against the said board as defendant, to determine whether or not any such classification, rate, toll, charge, regulation, or order made, fixed, or established by the board under the provisions of this act is just and reasonable; provided, that until the final decision in any such action the classification, rate, toll, charge, regulation, or order of the board affecting rates or charges shall be deemed to be final and conclusive; and provided further, that in any action, hearing, or proceeding in any court, the classification, rate, tolls, charges, regulations, and orders made, fixed, and established by said board shall prima facie be deemed to be just, reasonable, and proper. All costs and expenses incurred in the hearing, trial, or appeal of any action brought under this section shall be fixed and assessed as to the court may seem just and equitable.

History: En. Sec. 27, Ch. 37, L. 1907; Sec. 4390, Rev. C. 1907; re-en. Sec. 3809, R. C. M. 1921.

#### Appellant Review

The findings of the board are by law deemed prima-facie just, reasonable and proper, and courts should ascribe to them the strength due to the judgments of a tribunal appointed by law and informed by experience. The board's conclusion is subject to review, but when supported by evidence is accepted as final. Chicago, M., St. P. & P. R. Co. v. Board of Railroad Commrs., 126 M 568, 255 P 2d 346, 350, explained in 130 M 250, 253, 298 P 2d 1093.

#### Federal Court Jurisdiction

Three-judge district court held to have jurisdiction of suit by railroad to enjoin Montana railroad commissioners from enforcing orders for continuation of operation of certain of railroad's trains, since under this statute such review constituted exercise of a judicial function (Jud. Code Sec. 266, as amended, 28 U. S. C. A. Sec. 380). Great Northern Ry. Co. v. Nagle, 16 F Supp 532, 533.

#### Injunction

The district court has no power of control over any order of the railroad commission relating to rates and charges, except by final judgment; and this necessarily deprives a railroad company, as well as the shipper, of the right to invoke, and prohibits the court from issuing a preliminary injunction in its behalf. It has, however, jurisdiction to use the provisional remedy of injunction in limine to suspend an order made by the commission, requiring a railroad company to operate a local passenger train each way daily between designated stations, pending a final determination of an action brought by the company to have the order reviewed as unjust and unreasonable. State ex rel. Board of Railroad Commrs. v. District Court, 53 M 229, 233, 163 P 115, explained in 299 U S 170, 81 L Ed 101, 57 S Ct 169.

### Requiring Continuation of Service at a $\mathbf{Loss}$

Where convenience and necessity is found to exist, evidence of earnings and losses on its various services would be material before a railroad would be heard to complain that a service is an undue

burden on interstate commerce or that in rendering the service there is an unlawful taking of property without due process of law. Chicago, M., St. P. & P. R. Co. v. Board of Railroad Commrs., 126 M 568, 255 P 2d 346, 352, explained in 130 M 250, 253, 298 P 2d 1093.

The fact that several trains are run at a loss, is not, standing alone, sufficient to justify the discontinuance of the trains in question. It has long been settled that a requirement that a particular service be rendered at a loss does not make a service confiscatory and thereby an unconstitutional taking of property. The Constitution does not grant to a railroad company a continuing privilege of exercising its franchise and at the same time permit it to escape from the duties incidental to it. Chicago, M., St. P. & P. R. Co. v. Board of Railroad Commrs., 126 M 568, 255 P 2d 346, 351, explained in 130 M 250, 253, 298 P 2d 1093.

#### References

Doney v. Northern Pacific Ry. Co., 60 M 209, 227 et seq., 199 P 432; State v. Board of Railroad Commrs., 73 M 1, 5, 234 P 834; State v. Johnson, 75 M 240, 248, 243 P 1073; Chicago, M. & St. P. R. Co. v. Board of Railroad Commrs., 76 M 305, 312, 247 P 162; Montana Horse Products Co. v. Great Northern Ry. Co., 91 M 194, 200, 7 P 2d 919; Montana Power Co. v. Montana Public Service Commission, 12 F Supp 946, 948.

#### Collateral References

Carriers 18(5).
13 C.J.S. Carriers §§ 24, 284, 304, 305, 309, 310, 584.

(3810) Action by shippers. Any shipper, or other person interested, may bring an action in the district court of the county where the principal office or place of business of such railroad is situated, or in any county where any classification, rate, toll, charge, regulation, or order of the board is applicable, against the said board of railroad commissioners as defendant, to determine whether or not any such classification, rate, toll, charge, regulation, or order, made, fixed, or established by the board under the provisions of this act, is just and reasonable; provided, that until the final decision in any such action, the classification, rate, toll, charge, regulation, or order of the board affecting rates or charges shall be deemed to be final and conclusive, except as herein otherwise provided; and provided further, that in any action, hearing, or proceeding in any court, the classifications, rates, tolls, charges, regulations, and orders made, fixed, and established by said board shall prima facie be deemed to be just, reasonable, and proper. Costs shall be awarded in all actions brought under the provisions of this section as in other civil causes.

History: En. Sec. 28, Ch. 37, L. 1907; Sec. 4391, Rev. C. 1907; re-en. Sec. 3810, R. C. M. 1921. Board without Power to Change Freight Rates Retroactively

Under this chapter, creating, and pre-

scribing the duties of, the board of railroad commissioners, the board has no authority to make a retroactive order to the effect that rates (previously approved by the board) charged and collected on a shipment of livestock, were unjust and unreasonable, thus permitting the shipper to recover the difference between the amount collected and that subsequently found by the board to be a reasonable rate, the board's powers being limited to the changing or modification of existing rates as to the future. (Language in Doney v. Northern Pacific Ry. Co., 60 M 209, 199 P 432, inconsistent with the above holding and at variance with the correct conclusion announced therein, overruled.) Montana Horse Products Co. v. Great Northern Ry. Co., 91 M 194, 7 P 2d 919. Decision affirmed in Sunburst O. & R. Co. v. Great Northern R. Co., 91 M 216, 7 P 2d 927 and 287 U S 358, 77 L Ed 360, 53 S Ct 145.

#### Procedure

A shipper deeming himself aggrieved by a rate fixed by the railroad commission because unjust, unreasonable or discriminatory, must proceed under this section if he desires to have it declared so; where no rate has been fixed or the one established is considered excessive, he must ap-

ply to the commission for investigation and determination of his contention, under section 72-118, before he can maintain an action in the courts; and if his case is predicated upon freight charges made in excess of those fixed and established by the commission, his complaint must so allege and the action must be brought within twelve months (since amended) from the date of payment, under section 72-130. Doney v. Northern Pacific Ry. Co., 60 M 209, 234, 199 P 432, explained in 91 M 194, 203, 7 P 2d 919 and 91 M 216, 220, 7 P 2d 927.

Certiorari did not lie to annul an order of the board of railroad commissioners directing removal of station facilities from one town to another since relator had a sufficient remedy under this section by bringing an action in the district court to determine whether the order was just and reasonable. State v. Board of Railroad Commrs., 73 M 1, 5, 6, 234 P 834.

#### References

State ex rel. Board of Railroad Commrs. v. District Court, 53 M 229, 232, 163 P 115; State v. Johnson, 75 M 240, 248, 243 P 1073; Montana Citizens F. R. Assn. v. Board of Railroad Commrs., 128 M 127, 271 P 2d 1024, 1027.

72-134. (3811) Penalty for violation of law by railroad. If any railroad shall willfully violate any provision of this act, or shall do any other act herein prohibited, or shall refuse to perform any and all lawful orders emanating from said railroad commission relating to rates and charges, or any other duty enjoined upon it, for which a penalty has not herein been provided, for every such act of violation it shall pay to the state of Montana a penalty of not more than five hundred dollars.

History: En. Sec. 29, Ch. 37, L. 1907; Sec. 4392, Rev. C. 1907; re-en. Sec. 3811, R. C. M. 1921.

#### Collateral References

Carriers 20(1).
13 C.J.S. Carriers §§ 454, 475-477, 503, 505, 506.

72-135. (3812) Recovery of penalties and forfeitures. All penalties and forfeitures incurred, levied, and made under the provisions of this act, shall be collected by said board of railroad commissioners and paid over to the state treasurer and credited to the general fund; provided, however, that should the said board fail or refuse to institute appropriate action for the recovery of any penalty or forfeiture provided for herein, for the space of sixty days after notice of the cause of complaint by such person or shipper aggrieved, such person or shipper may institute and prosecute such action in the name of the state against such railroad, in the same manner as could the said board.

History: En. Sec. 30, Ch. 37, L. 1907; Sec. 4393, Rev. C. 1907; re-en. Sec. 3812, R. C. M. 1921.

#### Collateral References

Carriers 20(8).
13 C.J.S. Carriers §§ 457, 469, 478, 492, 504, 589.

72-136. (3813) Acceptance of favors and gratuities from railroads prohibited. No railroad commissioner nor the said secretary shall, directly or indirectly, solicit or request from or recommend to any railroad corporation, or any officer, attorney, or agent thereof, the appointment of any person to any place or position. Nor shall any railroad corporation, its attorney, or agent, offer any place, appointment, or position or other consideration to such commissioners, or either of them, nor to any clerks or employees of the commission or of the board; neither shall the commissioners, or either of them, nor their secretary, clerks, agents, employees, or experts, accept, receive, or request any pass from any railroad in this state, for themselves or for any other person, except as herein otherwise provided, or any present, gift, or gratuity of any kind from any railroad corporation; and the request or acceptance by them, or either of them, except as herein specified, of any such place or position, pass, presents, gifts, or other gratuity, shall work a forfeiture of the office of the commissioner or commissioners, secretary, clerk or clerks, agent or agents, and employee or employees, expert or experts, requesting or accepting the same. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by a fine of not more than five hundred dollars, or imprisonment not more than six months, or by both such fine and imprisonment.

History: En. Sec. 31, Ch. 37, L. 1907; Sec. 4394, Rev. C. 1907; re-en. Sec. 3813, R. C. M. 1921.

#### Traveling on Private Business

When members and employees of the railroad commission are traveling on private business they should pay fare. John

v. Northern Pacific Ry. Co., 42 M 18, 61, 111 P 632.

#### Collateral References

Carriers 21(1), 22. 13 C.J.S. Carriers §§ 515, 516, 518, 521, 526, 542, 589, 650.

72-137. (3814) Annual reports from railroads. The board shall require verified annual reports from each and every railroad owning, operating, or having any line of railroad in this state, prescribe the manner in which such reports shall be made, and may require specific answers to all questions upon which the board may desire information. It shall be the duty of the president or other officer in charge of such railroad to make such report and answers to the board. The board may, at such other times as it may deem necessary, require such other information, statements, or reports as may be deemed necessary, and fix the time for filing of the same. Any railroad failing or refusing to make or file such annual report, or failing or refusing to furnish such additional information, statements, or reports, as may be demanded by the board, shall forfeit the sum of five hundred dollars for each day that such refusal or neglect shall be continued.

History: En. Sec. 32, Ch. 37, L. 1907; Sec. 4395, Rev. C. 1907; re-en. Sec. 3814, R. C. M. 1921. Collateral References Carriers ≈ 9. 13 C.J.S. Carriers §§ 15, 19, 302.

72-138. (3815) Annual report of the board. Said board shall make and submit to the governor annual reports containing a full and complete account of the transactions of its office, together with such facts, suggestions, and recommendations as may be by it deemed necessary, which report shall be published as the reports of other departments of the state. The said

report shall contain a statement as to the number of accidents investigated by the board, as herein provided, and the number of persons killed or injured in them, and generally the causes of such accidents.

History: En. Sec. 33, Ch. 37, L. 1907; Sec. 4396, Rev. C. 1907; re-en. Sec. 3815, R. C. M. 1921. Collateral References

Public Service Commissions 6. 73 C.J.S. Public Utilities § 39.

72-139. (3816) Duties of board—suspension of commission. It is hereby made the duty of such board to see that the provisions of this act and all laws of this state concerning railroads are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected. And said board shall report all such violations, with the facts in its possession, to the attorney general or other officer charged with the enforcement of the laws, and request him to institute the proper proceedings; and all suits between the state and any railroad shall have precedence in all courts over all civil causes, original proceedings in the supreme court excepted. If any commissioner shall fail to perform his duties as provided for in this act, he may be removed from office as provided for by sections 94-5501 to 94-5516, and upon complaint made and good cause shown, the governor is authorized to suspend any commissioner or commissioners, and if, in his judgment, the exigencies of the case require, the governor is authorized to appoint temporarily some competent person or persons to perform the duties of such suspended commissioner or commissioners during the period of such suspension.

History: En. Sec. 34, Ch. 37, L. 1907; Sec. 4397, Rev. C. 1907; re-en. Sec. 3816, R. C. M. 1921. Collateral References

Public Service Commissions 3, 6. 73 C.J.S. Public Utilities §§ 35, 39.

#### References

Montana Horse Products Co. v. Great Northern Ry. Co., 91 M 194, 202, 7 P 2d 919.

72-140. (3817) Existing rights of actions not affected by law. This act shall not have the effect to release or waive any right of action by the state or any person for any right, penalty, or forfeiture which may have arisen, or may hereafter arise, under any law of this state, and all penalties accruing under this act shall be cumulative to each other, and a suit for or recovery of one shall not be a bar to the recovery of any other penalty.

History: En. Sec. 35, Ch. 37, L. 1907; Sec. 4398, Rev. C. 1907; re-en. Sec. 3817, R. C. M. 1921. Collateral References

Carriers 20(1).
13 C.J.S. Carriers §§ 454, 475-477, 503, 505, 506.

**72-141.** (3818) Jurisdiction of railroad commission over docks and wharves. The supervision of docks and wharves by the board of railroad commissioners is provided for by section 89-605.

History: New section recommended by code commissioner, 1921.

Collateral References Wharves \$\infty 12. 94 C.J.S. Wharves \\$ 7.

72-142. (3819) Railroad commission to inquire into observance of laws for safety of employees. It is hereby made the duty of the board of railroad commissioners to make inquiry into the observance by all railroads within

this state of the laws of the United States and of the state of Montana intended to safeguard the lives of the employees of persons or corporations engaged in operating the same, and to lay complaint before the proper officer, state or federal, of any infraction of any of such laws, and to prosecute before the proper court or tribunal any person guilty of violation of the penal provisions thereof.

History: En. Sec. 1, Ch. 115, L. 1913; re-en. Sec. 3819, R. C. M. 1921.

Collateral References
Railroads \$\infty 9(1).
74 C.J.S. Railroads \ 29.

72-143. (3820) Results to be stated in annual report. Said board shall, in its annual report, set out what effort it has made to carry out the provisions of this act, with the result thereof, and in detail what steps it has taken to procure to be prosecuted any violations of any such acts of which it has secured information.

History: En. Sec. 2, Ch. 115, L. 1913; re-en. Sec. 3820, R. C. M. 1921.

Collateral References
Public Service Commissions 6.
73 C.J.S. Public Utilities § 39.

72-144. (3821) Schedule of rates for transporting prisoners. The board of railroad commissioners of the state of Montana is hereby authorized and directed to promulgate the schedule of passenger rates, fixing the fare to be charged at the rate of one cent per mile, for transporting prisoners regularly sentenced to the state prison in the state of Montana, and the necessary guards to insure the safekeeping of such prisoners, to and from said state prison to any point within the state of Montana, for the purpose of conveying such prisoners to such point, or from such point to be employed on public roads or other public work.

History: En. Sec. 1, Ch. 2, L. 1917; re-en. Sec. 3821, R. C. M. 1921.

Collateral References Carriers € 12(4). 13 C.J.S. Carriers § 627 et seq.

72-145. (3822) Maintenance of loading platform by railroad. Every railroad company doing business in this state shall, within sixty days after notice from the board of railroad commissioners of the state of Montana. erect one or more platforms for the transfer of livestock, grain, and other commodities from wagons or otherwise to cars at each and every station or siding designated in such notice; such platforms to be erected so as not to endanger life and property. If any railroad company, after receiving notice as provided for in this section, shall fail, refuse, or neglect to erect platforms, as required by this and the following section, within the required sixty days, the said board of railroad commissioners is authorized and empowered, and it is made its duty, to notify such railroad company to appear before it at a certain time and place and show cause, if any there is, why such board of railroad commissioners should not issue an order requiring such railroad company to comply with the requirements of this section. The said board of railroad commissioners shall have power, after such hearing, to issue an order upon said railroad company commanding it to erect such platform, if the said board of railroad commissioners shall, upon such examination and hearing, deem such platform necessary. Any notice required to be served upon any railroad company

to carry out any of the provisions of this section, or similar provisions relating to the enlarging of such platforms, may be served upon any agent of said company within the state of Montana.

History: En. Sec. 1, Ch. 26, L. 1913; re-en. Sec. 3822, R. C. M. 1921.

Collateral References
Railroads©=225.
74 C.J.S. Railroads § 408.

72-146. (3823) Dimensions and other requirements of platform. Each platform shall be not less than twelve feet wide and thirty-two feet long, extending four feet and six inches, or such height as shall be determined by the said board of railroad commissioners, above the rails of the track, with suitable approaches to and from such platform to admit of the driving of loaded teams thereon.

History: En. Sec. 2, Ch. 26, L. 1913; re-en. Sec. 3823, R. C. M. 1921.

72-147. (3824) Enlargement of platform. The board of railroad commissioners shall have power to order an enlargement of such platforms whenever petitioned to that effect, and whenever the capacity of such platform is, in its judgment, clearly insufficient for the accommodation of the public.

History: En. Sec. 3, Ch. 26, L. 1913; re-en. Sec. 3824, R. C. M. 1921.

72-148. (3825) Erection of scales. Every railroad company shall allow suitable scales to be erected either upon the platform or upon the grounds adjacent thereto, if upon their right of way, for weighing and shipping purposes.

History: En. Sec. 4, Ch. 26, L. 1913; re-en. Sec. 3825, R. C. M. 1921.

72-149. (3826) Violation of law a misdemeanor—penalty. Every railroad company neglecting or refusing to comply with the requirements of this act shall be deemed guilty of a misdemeanor, and be subject to a fine of not less than five hundred dollars for every thirty days such failure shall continue after notice as aforesaid.

History: En. Sec. 5, Ch. 26, L. 1913; re-en. Sec. 3826, R. C. M. 1921.

Collateral References
Railroads ≈ 254(1).
74 C.J.S. Railroads § 437 et seq.

72-150. (3827) Rules for equipment of cars, trains, engines, and health and sanitation. The railroad commission of the state of Montana shall have full authority, after notice and hearing, to make and enforce rules and regulations providing for the installation on and equipment of trains, cars, or engines, with safety appliances, and providing for sanitation and adequate shelter as it affects the health of all railroad employees, including, but not limited to, trainmen, enginemen, yardmen, maintenance of way employees, highway crossing watchmen, clerical, platform, freight house and express employees; and shall have authority to inspect the same and enforce regulations with regard thereto, such inspection rules and regulations to be from time to time coextensive with the requirements of,

and in conformity to, the provisions of the acts of Congress, and rules and regulations of the interstate commerce commission as then effective.

History: En. Sec. 1, Ch. 136, L. 1909; re-en. Sec. 3827, R. C. M. 1921; amd. Sec. 1, Ch. 63, L. 1959.

#### Collateral References

Contributory negligence as a defense to a cause of action based upon violation of statute imposing duty on railroad. 10 ALR 2d 853

72-151. (3828) Brake equipment. The railroad commission of the state of Montana shall have the power and authority to examine and inspect all brakes and brake equipment and, after notice and hearing, to make and enforce reasonable rules and regulations with respect to the examination, inspection, and repair thereof, with a view of determining the proper measure of efficiency of said brakes and brake equipment. Such rules and regulations to be from time to time coextensive with the requirements of and in conformity to the provisions of the acts of Congress, and rules and regulations of the interstate commerce commission as then effective.

History: En. Sec. 2, Ch. 136, L. 1909; re-en. Sec. 3828, R. C. M. 1921.

72-152. (3829) Industrial and commercial spurs—provisos. The railroad commission of the state of Montana shall have full power and authority, after notice and hearing, to compel railroad companies operating in the state of Montana to construct industrial or commercial spurs to industries when there is or will be sufficient traffic to require such facilities; provided, however, that any such industrial or commercial spur will not exceed one mile in length from headblock to end of track, and shall be constructed pursuant to the usual and customary contract of the particular railroad company in constructing such spurs; and provided further, that such industrial or commercial spur shall not be ordered constructed except within the limits of extreme switches of stations or yards, or at sidings, unless such station, yards, sidings, or spurs are more than seven miles apart, nor unless such spurs can be so placed as to be reasonably safe and not unnecessarily interfere with main-line operation.

History: En. Sec. 4, Ch. 136, L. 1909; re-en. Sec. 3829, R. C. M. 1921.

NOTE.—See also section 72-156, which apparently repeals by implication a part of the above section.

#### References

Chicago, M. & St. P. R. Co. v. Board of

Railroad Commrs., 76 M 305, 315 et seq., 247 P 162.

#### Collateral References

Construction and effect of liability exemption or indemnity clause in spur track agreement. 20 ALR 2d 711.

72-153. (3830) Proceedings in district court. The district court shall have jurisdiction to enforce, by proper decree, injunction, or order, the rulings, orders, and regulations made or established by the commission under the provisions of this act. The proceeding therefor shall be by equitable action in the name of the state, and shall be instituted by the attorney general or county attorney, whenever advised by the board that any railroad is violating or refusing to comply with any rule, order, or regulation made by the commission, and applicable to such railroad. Such proceedings shall have precedence over all other business in such courts,

except criminal business. In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order, or regulation involved is unreasonable and unjust as to them. If, in such action, it be the decision of the court that the rule, regulation, or order is not so unreasonable or unjust, and that in refusing compliance therewith the railroad is thereby failing or omitting the performance of any duty or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to and compliance with the rule, regulation, or order, by the defendant, and its officers, agents, servants, and employees, and may grant such other relief as may be deemed just and proper.

Any violation of such decree shall render the defendant and officer, agent, servant or servants, or employees of the defendant, who are in any manner instrumental in such violation, guilty of contempt, and shall be punishable by a fine not exceeding one thousand dollars for each offense, or by imprisonment of the person guilty of contempt until he shall sufficiently purge himself therefrom, and such decree shall continue and remain in effect and be in force until the rule, regulation, or order shall be modified or vacated by the board; provided, however, that nothing herein contained shall be construed to deprive either party to such proceedings of the right to trial by jury, as provided by the seventh amendment to the constitution of the United States, or as provided by the constitution of this state. An appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court.

History: En. Sec. 5, Ch. 136, L. 1909; re-en. Sec. 3830, R. C. M. 1921.

Compiler's Note

The word "the" which followed the word "have," in the third sentence of the first paragraph, was omitted by the compiler.

Collateral References

Railroads©=9(2). 74 C.J.S. Railroads § 29.

72-154. (3831) Appeals to supreme court. Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of this act; such appeals shall have precedence over all other business, except criminal business and original proceedings in such court, and shall be heard and determined as are appeals in civil actions.

History: En. Sec. 6, Ch. 136, L. 1909; re-en. Sec. 3831, R. C. M. 1921.

Collateral References
Railroads©=10.
74 C.J.S. Railroads § 28.

72-155. (3832) Action to determine reasonableness of rule. Any railroad may bring an action in the district court of the county where the principal office or place of business is situated, or, in any county where any such rule, regulation, or order of the board is applicable, against the said board as defendant, to determine whether or not any such rule, regulation, or order, made, fixed or established by the board under provisions of this act, is just and reasonable; provided, that until the final decision in any such action, the rule, regulation, or order of the board affecting any railroad shall be deemed to be final and conclusive; and provided further, that in

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any action, hearing, or proceeding in any court, the rules, regulations, and orders, made, fixed, and established by said board, shall prima facie be deemed to be just, reasonable, and proper. All costs and expenses incurred in the hearing, trial, or appeal of any action brought under this section shall be fixed and assessed as to the court may seem just and equitable.

History: En. Sec. 7, Ch. 136, L. 1909; re-en. Sec. 3832, R. C. M. 1921.

Collateral References
Railroads \$\iiint 9(2).
74 C.J.S. Railroads \$ 29.

#### References

Chicago, M., St. P. & P. R. Co. v. Board of Railroad Commrs., 126 M 568, 255 P 2d 346, 349.

(3834) Powers of railroad commission as to stations and crossings. The board of railroad commissioners of the state of Montana shall have power and authority, in addition to all other powers hereafter vested in said board, whenever the line of one railroad or railway shall cross, intersect, or parallel (overhead, at grade, or otherwise) the railroad or railway of another company or corporation, after notice and hearing, to order and compel the installation of suitable platforms and station houses for the convenience of passengers desiring to transfer from one road to the other, and for the transfer of passengers, baggage, or freight, whenever the same shall be ordered by the board of railroad commissioners. And such company or corporation shall, when so ordered by the board of railroad commissioners, keep such passenger station warmed, lighted, and opened to the ingress and egress of all passengers a reasonable time before the arrival and after the departure of such trains as accommodate such station, carrying passengers on such railroad or railway. And said railroad or railway companies crossing, intersecting, or paralleling (overhead, at grade, or otherwise) shall stop such trains at said station house so located for the transfer of baggage, passengers, and freight, so as to furnish reasonable facilities for that character of a station when so ordered by the board of railroad commissioners, and the expense of construction and maintenance of such station house and platform shall be paid by such corporations in such proportions as they may agree, and if they fail to agree, as may be fixed by order of the board of railroad commissioners. Such corporation connecting by crossing, intersecting, or paralleling (overhead, at grade, or otherwise) shall also, when so ordered, after notice and hearing by the board of railroad commissioners, unite and connect the tracks of said several corporations so as to permit the transfer from the tracks of said several corporations to the tracks of each other, of loaded and unloaded cars designed for transportation on both roads; provided, however, that no such union or connection shall be ordered except where and when necessary to properly serve the public. The expense of construction and maintenance shall be apportioned, and the material to be used and the route to be followed shall be determined by such corporations as they may agree, and in the event that they fail to agree, as may be fixed by order of the board of railroad commissioners, and the expense thus incurred by the board of railroad commissioners shall be paid by the railroad or railway companies jointly interested, on such basis as the commission may order.

History: En. Sec. 1, Ch. 105, L. 1913; re-en. Sec. 3834, R. C. M. 1921.

#### Collateral References

Carriers € 15.

13 C.J.S. Carriers § 19.

10 Am. Jur., Carriers, p. 84, § 1075; p. 191, §§ 1290 et seq.; 44 Am. Jur., Railroads, p. 446, §§ 227 et seq.; p. 479, §§ 254 et seq.; p. 607, §§ 395 et seq.

Casual or temporary condition of station or its approaches causing injury. 10 ALR 259.

Injury by snow or ice on platform. 10 ALR 261.

Sparks or cinders injuring passengers. 11 ALR 1076.

Constitutionality of statute requiring railroad to construct and maintain private crossing. 12 ALR 227.

Right to damages because of abandon-

ment of station. 23 ALR 555.

Municipal corporation's power to require railroad to eliminate grade crossings. 35 ALR 1322 and 36 ALR 1122.

Injury to passenger while passing through turnstile, door, or gate. 40 ALR 828.

Liability of carrier of passengers for negligence in assisting them to board or alight, 55 ALR 389 and 59 ALR 940.

Constitutional power to compel railroad company to relocate or reconstruct highway crossing or to pay or contribute to expense thereof. 55 ALR 660; 62 ALR 815 and 109 ALR 768.

Duty and liability of carrier toward one accompanying departing passenger or present to meet incoming one, with respect to conditions at or about the station. 96 ALR 614.

Changed conditions as affecting duty, or enforcement of duty, as to maintenance of stations imposed upon railroad by charter or statute. 111 ALR 57.

Liability of carrier for injury to passenger as result of ice, snow or rain on exposed or interior portions of car. 117 ALR 522.

72-157. (3835) "Paralleling" defined. "Paralleling," as referred to in this act, shall be held to mean where the main tracks of parallel lines of railroad or railway are not more than two thousand feet apart, when measured from center to center.

History: En. Sec. 1, Ch. 105, L. 1913; re-en. Sec. 3835, R. C. M. 1921.

72-158. (3836) Joint rates—division among carriers. Whenever the board of railroad commissioners of the state of Montana shall have established a joint rate for the transportation of freight carried over two or more connecting lines of railroad, railway, or common carrier, the railroads, railways, or common carriers affected by such joint rate may, by agreement, provide for the distribution thereof between themselves, and in the event that the railroads, railways, or common carriers affected by such rates shall fail to agree upon the distribution of such rate for a period of sixty days after the order fixing and determining such joint rate shall have been made by the board of railroad commissioners, then the said board of railroad commissioners shall have power, and it is hereby made its duty, to call a hearing, of which hearing the railroads, railways, or common carriers affected by such joint rate shall have at least twenty days' notice, and upon such hearing the board of railroad commissioners shall proceed to fix and determine the pro rata distribution of such joint rate between the railroads, railways, or common carriers affected thereby.

History: En. Sec. 2, Ch. 105, L. 1913; re-en. Sec. 3836, R. C. M. 1921.

Collateral References Carriers 193. 13 C.J.S. Carriers § 315.

72-159. (3837) Power of railroad commission as to sidetracks, stock-yards and chutes. The board of railroad commissioners of the state of Montana shall have full power and authority, after notice and hearing, to

compel railroads, railways, or common carriers operating within the state of Montana, to construct or extend public loading or unloading tracks at stations, and shall likewise have full power and authority to compel the construction or extension of stockyards, stockchutes, or stockpens, whenever the necessity therefor has been established to the satisfaction of the commission.

History: En. Sec. 3, Ch. 105, L. 1913; re-en. Sec. 3837, R. C. M. 1921.

72-160. (3838) Enforcement of regulation in district court. The district court shall have jurisdiction to enforce, by proper decree, injunction, or order, the rulings, orders, and regulations made or established by the commission under the provisions of this act. The proceedings therefor shall be by equitable action in the name of the state, and shall be instituted by the attorney general or county attorney, whenever advised by the board that any railroad, railway, or common carrier is violating or refusing to comply with any rule, order, or regulation made by the commission, and applicable to such railroad, railway, or common carrier. Such proceedings shall have precedence over all other business in such courts, except criminal business. In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order, or regulation involved is unreasonable and unjust as to him. If, in such action, it be the decision of the court that the rule, regulation, or order is not unreasonable or unjust, and that in refusing to comply therewith the railway, railroad, or common carrier is thereby failing or omitting the performance of any duty or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to, and compliance with the rule, regulation, or order by the defendant, and its officers, agents, servants, and employees, and may grant such other relief as may be deemed just and proper.

Any violation of such decree shall render the defendant, officer, agent, servant, or servants or employees of the defendant, who is in any manner instrumental in such violation, guilty of contempt, and shall be punished by a fine not exceeding one thousand dollars for each offense, or by imprisonment of the person guilty of contempt, until he shall sufficiently purge himself therefrom, and such decree shall continue and remain in effect and be in force until the rule, regulation, or order shall be modified or vacated by the board of railroad commissioners; provided, however, that nothing herein contained shall be construed to deprive either party to such proceedings of the right to trial by jury, as provided by the seventh amendment to the constitution of the United States, or as provided by the constitution of this state. Any appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court.

History: En. Sec. 4, Ch. 105, L. 1913; re-en. Sec. 3838, R. C. M. 1921.

Collateral References
Railroads \$\sim 9(2)\$.
74 C.J.S. Railroads § 29.

72-161. (3839) Appeals to supreme court. Appeals may be taken to the supreme court from the judgment of any district court in any action

brought under the provisions of this act; such appeals shall have precedence over all other business, except criminal business and original proceedings in such court, and shall be heard and determined as are appeals in civil actions.

History: En. Sec. 5, Ch. 105, L. 1913; re-en. Sec. 3839, R. C. M. 1921.

Collateral References
Railroads \$\infty 10.
74 C.J.S. Railroads \$ 28.

(3840) Action to determine reasonableness of rule. Any railroad, railway, or common carrier may bring an action in the district court of the county where the principal office or place of business is situated, or in any county where any such rule, regulation, or order of the board of railroad commissioners is applicable, against the said board as defendant, to determine whether or not any such rule, regulation, or order made, fixed or established by said board under provisions of this act, is just and reasonable; provided, that until the final decision in any such action, the rule, regulation, or order of said board affecting any railroad, railway or common carrier shall be deemed final and conclusive; and provided, further, that in any action, hearing or proceeding in any court, the rules, regulations, and orders made, fixed, and established by said board, shall prima facie be deemed to be just, reasonable, and proper. All costs and expenses incurred in the hearing, trial, or appeal of any action brought under this section shall be fixed and assessed as to the court may seem just and equitable.

History: En. Sec. 6, Ch. 105, L. 1913; re-en. Sec. 3840, R. C. M. 1921.

Collateral References
Railroads \$\infty 9(2).
74 C.J.S. Railroads \\$ 29.

72-163. (3841) Penalty for failure of railroad to comply with regulations. Any railroad or railway company, or common carrier, its officers or agents, subject to the provisions of this act, who shall refuse or fail to comply with the provisions of this act, or any order, rule, or regulation relative thereto, made by the board of railroad commissioners, shall be subject to a fine of not less than twenty-five dollars, nor more than fifty dollars, and each day of such refusal or failure shall be deemed a separate offense and be subject to the penalty herein prescribed, such fine to be recovered in a civil action upon complaint of the board of railroad commissioners in any court of competent jurisdiction.

History: En. Sec. 7, Ch. 105, L. 1913; re-en. Sec. 3841, R. C. M. 1921.

Collateral References
Railroads©=254(2).
74 C.J.S. Railroads § 444.

72-164. (3842) Railroad commission may order electric signal bells installed. Authority is hereby given to the board of railroad commissioners of the state of Montana upon petition in writing made to it by any board of county commissioners of the state of Montana, to order railroad companies to install and maintain an electrically operated bell or other signaling device at all points in the state of Montana where the main lines, spurs, or switches of any railroad in continuous operation and use, owned or operated by them, cross any public highway now lawfully established or hereafter laid out within the state of Montana, and

where the contour of the country adjacent to said crossing is such that a person approaching same along said highway cannot, at a distance of twenty-five (25) feet of said crossing, obtain an unobstructed view of said railroad track for a distance of one-half (½) mile on either side of said crossing; or where any other hazardous conditions exist which make it advisable that electric signaling devices be installed; provided, however, all persons driving motor vehicles upon the public highways of this state, outside of corporate limits of incorporated cities or towns, where the view is obscure, or when a moving train is within sight or hearing, shall bring said vehicle to a full stop not less than ten (10) nor more than one hundred (100) feet from where said highway intersects railroad tracks within this state, before crossing the same, at all crossings where a flagman or a mechanical device is not maintained to warn the traveling public of approaching trains or cars.

History: En. Sec. 1, Ch. 151, L. 1919; re-en. Sec. 3842, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1957.

## Contributory Negligence

Truck driver could not recover damages from railroad from collision with passenger train where the driver could have seen or heard the train if he had taken proper precautions. Monforton v. Northern Pacific Ry. Co., — M —, 355 P 2d 501, 506.

# Does Not Absolve Motorist from Using Reasonable Care

One of the highest obligations of railroad operators is to protect the public at highway crossings. Watchmen and warning devices are required by law and installed for the primary purpose of warning the traveling public of approaching trains or cars, but the absence of such warning devices does not excuse the negligence of the highway traveler who is charged with reasonable care in the premises under this section. Incret v. Chicago, M., St. P. & P. R. Co., 107 M 394, 412, 86 P 2d 12.

# Duty of Driver to Stop

This section requiring a motorist, when view of railroad crossing is obscure, to stop not less than 10 nor more than 100 feet from intersection of crossing and highway does not impose on driver duty to stop within such distance from a grade crossing with the location of which driver is not familiar and which he cannot see by reason of peculiar conditions. Broberg v. Northern Pacific Ry. Co., 120 M 280, 182 P 2d 851, 860.

This section does not apply to trains which are not approaching a crossing but are actually occupying it. Broberg v. Northern Pacific Ry. Co., 120 M 280, 182 P 2d 851.

## Duty of Guest of Driver

The rule that the failure of a driver of an automobile to observe the requirements of this section, in driving motor vehicles upon the public highway, may not by imputation be made the default of his guest or passenger, does not absolve the latter from taking such precaution for his own safety as under the circumstances are reasonable. Grant v. Chicago, M. & St. P. R. Co., 78 M 97, 252 P 382, distinguished in 105 M 59, 68, 69 P 2d 579.

# Effect of Inapplicable Instruction Based Hereon

In an action against a railway company to recover damages for personal injuries sustained in a collision between an automobile and a freight train, the court gave an instruction based on this section but omitted therefrom the provision relating to crossings outside of cities and towns. Held that failure of the jury to follow the inapplicable instruction did not justify reversal of the judgment for plaintiff. Jarvella v. Northern Pacific Ry. Co., 101 M 102, 114, 53 P 2d 446.

# "Obscure" Defined

The word "obscure" as used in this section means "not clear, full or distinct." Broberg v. Northern Pacific Ry. Co., 120 M 280, 182 P 2d 851.

## References

Normandin v. Payne, 65 M 543, 548, 212 P 285; Knott v. Pepper, 74 M 236, 244, 239 P 1037; Maynerd v. City of Helena, 117 M 402, 411, 160 P 2d 484.

# Collateral References

Railroads 243.
74 C.J.S. Railroads § 433.

72-165. (3843) Petition for installation—hearing and order. It shall be the duty of the board of railroad commissioners of the state of Montana, upon the presentation of any petition by a board of county commissioners, requesting the installation of the signaling device provided for in this act, to hold a hearing, if same be demanded by the railway company or companies affected, upon due notice to all interested parties in such manner as the commission shall direct. Upon said hearing, if a hearing be demanded, or without a hearing if same has not been demanded, the commission shall make such order as it sees fit, and shall, in its discretion, order or refuse to order the installation of the signaling devices as petitioned for by said board of county commissioners.

History: En. Sec. 2, Ch. 151, L. 1919; re-en. Sec. 3843, R. C. M. 1921.

72-166. (3844) Construction and requirements of signal devices. All electric bells or other signaling devices required by this act to be installed, upon direction of the board of railroad commissioners of the state of Montana, shall be so constructed that they will operate automatically upon the approach of a train, and will commence sounding when any approaching train is at such distance from said crossing as the board of railroad commissioners may determine and order, and shall continue to sound until the train has reached said crossing.

History: En. Sec. 3, Ch. 151, L. 1919; re-en. Sec. 3844, R. C. M. 1921.

## Collateral References

Customary or statutory signals from train as measure of railroad's duty as to warning at highway crossing. 5 ALR 2d 112.

72-167. (3845) Time within which signaling device must be installed—limitation upon power of railroad commission. It shall be the duty of every person, firm, or corporation, owning or operating any line of railroad within the state of Montana, to equip its crossing with the signaling device herein described, within three months after being ordered by the board of railroad commissioners of the state of Montana so to do. Nothing herein contained shall be so construed as to authorize the board of railroad commissioners to order the installation of signaling devices, except upon petition of a board of county commissioners, and after a hearing as hereinbefore provided for.

History: En. Sec. 4, Ch. 151, L. 1919; re-en. Sec. 3845, R. C. M. 1921.

72-168. (3846) Penalty for noncompliance with order of railroad commission. Any railroad company, person, firm, or corporation failing to comply with the terms of this act, or failing to equip its lines with its signaling device herein described, when ordered by the board of railroad commissioners of the state of Montana so to do, within the time specified by said order, shall forfeit to the state of Montana the sum of fifty dollars for each and every failure to equip each crossing under its control with the signaling device required by this act, and each day's failure to comply with the terms of this act shall constitute a separate offense and shall give rise to a like liability.

History: En. Sec. 5, Ch. 151, L. 1919; re-en. Sec. 3846, R. C. M. 1921.

Collateral References
Railroads©=254(2).
74 C.J.S. Railroads § 444.

# CHAPTER 2

#### RAILROAD COMPANIES—GENERAL POWERS AND DUTIES

Section 72-201. May construct and operate railroads.

72-202. Capital stock.

72-203. Sale of delinquent stock.

72-204. Books to be opened for subscription-election of directors.

72-205. Powers of railroad corporations.

72-206. Maintenance of hotel by railroad in national park and along its line.

72-207. Right of way in canyon.

72-208. Survey, annual work and completion of road.

72-209. Railroads on reservations.

72-210. May change location or grade.

72-211. May borrow money and secure payment. 72-212. May buy and sell necessary real estate. 72-213. May divert and cross streams and roads.

72-214. Principal office.

72-215. May maintain telegraph line.

72-216. State not responsible for debts of railroad.

72-217. May increase capital stock.

72-218. May accept provisions of act of Congress.

72-219. Penalties—exorbitant and discriminatory rates—equipment requirements—posting rates—transporting dangerous materials with passengers—excessive speed—whistle and bell requirements—reports.
72-220. Annual report—what to contain.

72-220. Annual report—what to contain, 72-221. May extend line into Montana, 72-222. Two or more may consolidate.

72-223. May lease or purchase other railroads.

72-224. May issue and secure bonds.

72-225. Judgment as lien against property.

72-226. Amendment of certificate of incorporation.

72-227. Record of amendment.

72-228. Amended certificate may be amended.

72-229. May lease or buy other railroads.

72-230. Prior consolidation, sale or lease legalized.

72-201. (6503) May construct and operate railroads. Any railroad corporation shall be authorized to locate, construct, maintain, and operate a railroad with a single or double track, with such sidetracks, turnouts, machine shops, offices, and depots as may be necessary, between any points it may select within the places named in the articles of incorporation as termini of such road, and it may construct branches to any point in this state, and connect its road with that belonging to any other person or corporation, and may consolidate with any road not a parallel or competing line.

History: En. in substance, Sec. 4, p. 93, Ex. L. 1873; re-en. Sec. 302, 5th Div. Rev. Stat. 1879; re-en. Sec. 680, 5th Div. Comp. Stat. 1887; amd. Sec. 890, Civ. C. 1895; re-en. Sec. 4271, Rev. C. 1907; re-en. Sec. 6503; R. C. M. 1921. Cal. Civ. C. Secs. 454-496.

#### Cross-References

Assessment of property for taxation, secs. 84-427, 84-428.

Freight line companies, taxation, sec. 84-5409.

Incorporation, sec. 15-109.

Regulation by cities and towns, secs. 11-913, 11-914, 11-968.

Sleeping car companies license tax, secs. 84-2301 to 84-2310.

## Eminent Domain

The provisions of this section and sections 15-810 and 72-205 are exceedingly liberal, but they must be interpreted in the light of section 93-9905 and the rule of necessity must be determinative of the right to take in each instance. Northern Pacific Ry. Co. v. McAdow, 44 M 547, 555, 121 P 473.

## References

State ex rel. Bloomington v. District Court, 34 M 535, 539, 88 P 44; Pue v. Northern Pacific Ry. Co., 78 M 40, 43, 252 P 313.

Collateral References
Railroads 2.
74 C.J.S. Railroads § 4.

72-202. (6504) Capital stock. The capital stock of such corporation shall consist of such sum as may be named in the articles of incorporation, in shares of one hundred dollars each; such shares shall be regarded as personal property. An installment of ten per centum on each share of stock shall be paid at the time of making the subscription, and the residue thereof shall be paid in installments, not exceeding twenty-five per centum on the capital stock, which installments shall not be called for more frequently than once in three months, and shall be payable at the principal office of the corporation to such persons as may be required by the directors.

History: En. in substance, Sec. 5, p. 93, Ex. L. 1873; re-en. Sec. 303, 5th Div. Rev. Stat. 1879; re-en. Sec. 681, 5th Div. Comp. Stat. 1887; amd. Sec. 891, Civ. C. 1895; re-en. Sec. 4272, Rev. C. 1907; re-en. Sec. 6504, R. C. M. 1921.

# References

Daly Bank & Trust Co. v. Great Falls Street R. Co., 32 M 298, 303, 80 P 252.

Collateral References
Railroads \$\infty\$=15.
74 C.J.S. Railroads \\$ 13.

72-203. (6505) Sale of delinquent stock. If any installment of stock shall remain unpaid for sixty days after the time specified for payment thereof, whether such stock is held by the original subscriber or his assignee, trustee, or successor in interest, the directors may sell the stock so unpaid at public auction for the installment then due thereon, first giving thirty days' public notice of the time and place of sale in some newspaper of general circulation in this state, and by written notice sent by mail within five days after default made, to each stockholder who is in default and whose name appears upon the books of the corporation, directed to him at his place of residence, or if that is not known to the secretary, then to his address as last reported by the secretary of the corporation; and if any residue of money shall remain after paying the amount due on said stock, the same shall, on demand, be paid over to the owner; but where any stock shall have belonged to a person deceased, the claim for installments shall not be liable to sale hereunder until a failure by the personal representative of the deceased owner to pay the installments due in regular course of administration.

History: En. in substance, Sec. 6, p. 94, Ex. L. 1873; re-en. Sec. 304, 5th Div. Rev. Stat. 1879; re-en. Sec. 682, 5th Div. Comp. Stat. 1887; amd. Sec. 892, Civ. C. 1895; re-en. Sec. 4273, Rev. C. 1907; re-en. Sec. 6505, R. C. M. 1921.

72-204. (6506) Books to be opened for subscription—election of directors. The persons named in said articles of incorporation, or a majority of them, shall be authorized to order books to be opened for receiving subscriptions to the capital stock of said corporation, at such time or times and at such place or places as they may deem expedient, after having given at least thirty days' notice in a newspaper of general circulation in this state of the time and place of opening books; and as soon as five per centum on the capital stock shall be subscribed, they may give like notice for the stockholders to meet at such time and place, within the state, as they may designate, for the purpose of electing five or more directors, who shall

continue in office until the time fixed for the annual election, which time shall be within six months from the date when such directors were elected, and until their successors are elected and qualified; at the time and place appointed directors shall be elected in the manner provided in section 15-405. After the first election of directors, no person save the personal representatives of deceased persons, as aforesaid, shall vote on any share on which any installment is in default by reason of the nonpayment thereof, after the expiration of the thirty days' notice of sale hereinbefore provided for.

The persons named in such articles, or such of them as may be present, shall be inspectors of such election, and shall certify what persons are elected directors, and appoint the time and place for holding their first meeting. A majority of said directors shall form a board and be competent to fill vacancies therein, make bylaws, and transact all business of the corporation. A new election shall be annually held for directors, at such time and place as the stockholders at their first meeting shall determine, or as the bylaws of the corporation may require; and the directors elected at any election shall, so soon thereafter as may be convenient, choose one of their number to be president, and shall appoint a secretary and a treasurer of the corporation. The directors, before entering upon their duties, shall each take an oath or affirmation faithfully to discharge his duties; and they may from time to time make such dividends of the actual net profits of said corporation as they may think proper, and shall hold their offices until their successors are elected and qualified.

History: En. in substance, Sec. 7, p. 95, Ex. L. 1873; re-en. Sec. 305, 5th Div. Rev. Stat. 1879; re-en. Sec. 683, 5th Div. Comp. Stat. 1887; amd. Sec. 893, Civ. C. 1895; re-en. Sec. 4274, Rev. C. 1907; re-en. Sec. 6506, R. C. M. 1921.

Operation and Effect

This section fixes five as the minimum

number of the directors of a railroad corporation. Great Falls & Teton County R. Co. v. Ganong, 48 M 54, 55, 136 P 390.

Collateral References

Railroads 15, 17.
19 C.J.S. Corporations § 715 et seq.

**72-205.** (6507) **Powers of railroad corporations.** Every railroad corporation has power:

- 1. To cause such examination and surveys to be made as may be necessary to the selection of the most advantageous route for the railroad; and for such purposes their officers, agents, and employees may enter upon the lands or waters of any person, subject to liability for all damages which they do thereto;
- 2. To receive, hold, take, and convey, by deed or otherwise, as a natural person, such voluntary grants and donations of real estate and other property which may be made to it to aid and encourage the construction, maintenance, and accommodation of such railroad;
- 3. To purchase, or by voluntary grants or donations to receive, enter, take possession of, hold, and use all such real estate and other property as may be absolutely necessary for the construction and maintenance of such railroad, and for all stations, depots, and other purposes necessary to successfully work and conduct the business of the road;

- 4. To lay out its road, not exceeding in width one hundred feet on each side of its center line, unless a greater width be required for the purpose of excavation or embankment, and to construct and maintain the same, with a single or double track, and with such appendages and adjuncts as may be necessary for the convenient use of the same;
- 5. To construct their road across, along, or upon any stream of water, watercourse, roadstead, bay, navigable stream, street, avenue, or highway, or across any railway, canal, ditch, or flume which the route of its road intersects, crosses, or runs along, in such manner as to afford security for life and property; but the corporation shall restore the stream or watercourse, road, street, avenue, highway, railroad, canal, ditch, or flume thus intersected to its former state of usefulness, as near as may be, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise;
- 6. To cross, intersect, join, or unite its railroad with any other railroad, either before or after construction, at any point upon its route, and upon the grounds of such other railroad corporation, with the necessary turnouts, sidings, and switches, and other conveniences in furtherance of the objects of its connections; and every corporation whose railroad is, or shall be hereafter, intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersections and connections, and grant facilities therefor; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points or the manner of such crossings, intersections, and connections, the same shall be ascertained and determined as is provided in sections 93-9901 to 93-9926;
- 7. To purchase lands, timber, stone, gravel, or other materials to be used in the construction and maintenance of its road, and all necessary appendages and adjuncts, or acquire them in the manner provided in sections 93-9901 to 93-9926, for the condemnation of lands; and to change the line of its road, in whole or in part, whenever a majority of the directors so determine, as is provided hereinafter; but no such change must vary the general route of such road, as contemplated in its articles of incorporation;
- 8. To carry persons and property on their railroad, and receive tolls or compensation therefor:
- 9. To erect and maintain all necessary and convenient buildings, stations, depots, fixtures, and machinery for the accommodation and use of their passengers, freight, and business;
- 10. To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor within the limits prescribed by law, and subject to alteration, change, or amendment by the legislative assembly at any time;
- 11. To regulate the force and speed of their locomotives, cars, trains, or other machinery used and employed on their road, and to establish, execute, and enforce all needful and proper rules and regulations for the management of its business transactions usual and proper for railroad corporations.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 4275, R. C. M. 1921. Cal. Civ. C. Sec. 465. Subd. 3, Acquire Real Estate
Under subdivision 3 of this section, a railway company may acquire any land

necessary for the construction and maintenance of its road and its adjuncts and appendages by purchase or by voluntary grant or donation, subject only to the limitation that the right of way shall not exceed two hundred feet in width, except where a greater width is required for excavations and embankments, and that the land for excavations, embankments, sidetracks, turnouts, shops, etc., shall not exceed the amount necessary for such uses and purposes. State ex rel. Bloomington v. District Court, 34 M 535, 543, 88 P 44. See Northern Pacific Ry. Co. v. McAdow, 44 M 547, 554, 121 P 473; Postal Tel.-Cable Co. of America v. Nolan, 53 M 129, 137, 162 P 169.

## Subd. 4, Lay out Its Road

The language of subdivision 4 of this section, "not exceeding in width one hundred feet on each side of its center line," is not a grant but a limitation. No obligation is imposed upon any company to take the full amount permitted, and in the absence of any necessity it cannot do so, either as against the will of the owner or the necessities of a competing road. Great Falls & Teton County R. Co. v. Ganong, 48 M 43, 50, 136 P 391.

A railroad company, in projecting a route through a town, had staked a line through the center of one of its streets eighty feet wide, caused it to be mapped, and subsequently approved by its executive officer. In an action by a rival company looking to the condemnation of a strip of land sixty feet wide immediately adjoining one side of the street, the evidence was held insufficient to sustain a finding that such strip had already been appropriated by the first company for a public use of equal necessity, namely, for right of way purposes, under subdivision 4 of this section. Great Falls & Teton County R. Co. v. Ganong, 48 M 43, 136 P 391.

The mere fact that one has made substantial improvements along a railroad in the expectation of its continued operation does not burden the railroad company with an implied obligation to operate. Briggs v. Great Northern Ry. Co., 92 M 463, 465, 15 P 2d 840.

# Subd. 5, Obstruction of Watercourses

Under the common-law rule of liability for the obstruction of surface waters, in force in this state in the absence of statute providing otherwise, defendant railway company was not liable for damage caused to plaintiff's property by surface waters which were dammed up by its embankment and for the escape of which it had failed to construct culverts or openings, its duty in this respect being confined, by this subdivision of this section,

and section 72-644, to providing outlets for streams, watercourses, etc., intersected by the embankment, plaintiff's evidence having failed to establish that the invading waters were conveyed through a natural watercourse. Le Munyon v. Gallatin Valley R. Co., 60 M 517, 524, 525, 199 P 915.

Under the common law a railroad company was, and under this section and this subdivision, is, required to exercise the skill and knowledge ordinarily practiced in the construction of an embankment used in connection with a bridge over a watercourse, and leave sufficient openings for the passage of such water as is known to flow in the stream in time of usual freshets, and such as experience shows might occur at any time. Heckman v. Northern Pacific Ry. Co., 93 M 363, 377 et seq., 20 P 2d 258.

The usefulness or "franchise" of a nonnavigable stream which under this subdivision of this section a railroad company in crossing it in the course of construction must restore, is its use for irrigation purposes and drainage. Heckman v. Northern Pacific Ry. Co., 93 M 363, 377 et seq., 20 P 2d 258.

The provision of this subdivision of this section, that a railroad corporation in constructing its road across a stream must do so "in such manner as to afford security for life and property" does not make the corporation an insurer against damage to property by flooding, but may be held liable only upon a showing of negligence. Heckman v. Northern Pacific Ry. Co., 93 M 363, 377 et seq., 20 P 2d 258.

Where a railroad company fails to restore a stream which it crosses while constructing its road to its original usefulness, its failure in that regard constitutes actionable negligence. Heckman v. Northern Pacific Ry. Co., 93 M 363, 377 et seq., 20 P 2d 258.

A "watercourse" within the meaning of this section is a channel cut by running water, with well-defined banks through which water flows for substantial period of each year. Heckman v. Northern Pacific Ry. Co., 93 M 363, 377 et seq., 20 P 2d 258.

The duty cast upon a railroad company by this section to restore a stream crossed by its road to its original usefulness does not require that the full width of the channel must be left open for the passage of water, but may be fulfilled by straightening and deepening it so as to carry as much water as it did originally; the duty may not be added to by courts. Heekman v. Northern Pacific Ry. Co., 93 M 363, 377 et seq., 20 P 2d 258.

Where a railroad company after exercise of reasonable care in the construction of an embankment and bridge in crossing a

stream thereafter narrows the opening left for the passage of water, or subsequently discovers that the opening is insufficient to carry away waters which may reasonably be anticipated, it must make suitable provision for such water within a reasonable time; otherwise the duty it owes under this section to restore the stream to its original usefulness is not discharged. Heckman v. Northern Pacific Ry. Co., 93 M 363, 377 et seq., 20 P 2d 258.

If after a railroad company has fully discharged its duty, as above outlined and imposed upon it by this section, damage results from the insufficiency of openings in an embankment to carry away waters incident to an unprecedented storm and consequent flood, liability does not attach to it, the necessary element of negligence being lacking. Heckman v. Northern Pacific Ry. Co., 93 M 363, 377 et seq., 20 P 2d 258.

Where a railroad company constructs and maintains a grade across a water-course with proper culverts in conformity with statutory requirements and so as to provide for the passage of waters reasonably to be expected in times of usual freshets, or such as are unusual but which experience shows might occur at any time, its construction or maintenance is not negligence per se, but liability for damages due to flooding of lands attaches only upon a showing of negligence. Peel v. Chicago, M., St. P. & P. R. Co., 94 M 334, 341, 22 P 2d 617.

As to the duty of a railway company constructing a bridge or embankment over a stream, to restore the stream to its original state of usefulness, an instruction that "the law contemplates some variation from the original condition of the stream and allows some discretion in the engineers," held not error, but in accord with the law announced on a previous appeal. Wibaux Realty Co. v. Northern Pacific Ry. Co., 101 M 126, 134, 54 P 2d 1175.

In an action for damages sustained in flood which engulfed plaintiff's premises, held, that under this statute, a railroad company maintaining a bridge across a stream has duty of ordinary care for protection of life and property along course of stream, and the mere fact that flood occurring in valley was unprecedented in volume and extent did not relieve railroad from liability to maintain proper bridge across stream, and whether it was negligent in failing to do so in anticipation of flood and whether negligence was proximate cause of plaintiff's damages was for jury. Northern Pacific Ry. Co. v. Wagner, 86 F 2d 63.

## Subd. 7, Eminent Domain

The provisions of this section and sections 15-810 and 72-201 are exceedingly liberal, but they must be interpreted in the light of section 93-9905 and the rule of necessity must be determinative of the right to take in each instance. Northern Pacific Ry. Co. v. McAdow, 44 M 547, 555, 121 P 473.

## Collateral References

Railroads 1, 18, 44-100, 214-247.
74 C.J.S. Railroads § 89, 148 et seq.,
151, 156, 159, 161, 398, 400, 410 et seq.,
416 et seq., 428 et seq., 433.
See 13 Am. Jur. 770, Corporations, § 739;
44 Am. Jur. 228, Railroads, §§ 18 et seq.

72-206. (6508) Maintenance of hotel by railroad in national park and along its line. Any railway company or corporation, organizing under the laws of the United States, the state of Montana, or of any other state or territory, and owning or operating a line of railway in the state of Montana, may, in connection with its railway business, construct, acquire, own, operate, and maintain, in or on public or national parks, traversed, touched, or reached by its said line of railway in the state of Montana, and at convenient points along its said line, hotels, inns, and restaurants for the accommodation of the employees and patrons of said railway company or corporation, either in its own name or in the name of another corporation, provided that the stock of such other corporation is owned or controlled by said railway company or corporation.

History: En. Sec. 1, Ch. 82, L. 1915; re-en. Sec. 6508, R. C. M. 1921.

Collateral References
Railroads 217, 218.
74 C.J.S. Railroads §§ 406, 416.

**72-207.** (6509) **Right of way in canyon.** Any such corporation whose right of way, or whose track upon such right of way, extends through any canyon, pass, or defile, shall not exclude any other such corporation from

a passage through the same upon equitable terms, and in case of disagreement, upon application of either of the parties, with notice to the other, the same shall be adjusted by a court of competent jurisdiction; and if the passage of any such railroad through the canyon, pass, or defile causes the disuse or change of location of any public wagon road that may traverse the same, damages shall be awarded therefor, as provided by Title 93, and if it shall become necessary for any other railroad company passing through the state to cross or pass any other railroad track or defile already constructed or surveyed, the same may be so done without any compensation therefor, except the actual damage done by so doing; and when two or more companies desire to pass through the same canyon, pass, or defile, neither shall exclude the other from passing through the same, and neither shall have any compensation therefor, except the actual damage done by so doing; and should it be necessary that the said companies should use the same track or bed in passing through such canyon, pass, or defile, the same may be done without any compensation therefor from one to the other, except the actual damage by so doing.

History: En. Sec. 11, p. 100, Ex. L. 1873; re-en. Sec. 309, 5th Div. Rev. Stat. 1879; re-en. Sec. 687, 5th Div. Comp. Stat. 1887; re-en. Sec. 895, Civ. C. 1895; re-en. Sec. 4276, Rev. C. 1907; re-en. Sec. 6509, R. C. M. 1921.

## Operation and Effect

Where one railroad company, duly authorized, has built its roadbed, and obtained its right of way and grounds for station buildings, machine shops, sidetracks, etc., through a defile or canyon, the court will grant an injunction in its favor, restraining another railroad corporation, authorized to build to the same

point, from going upon or interfering with the track or right of way of the corporation first in possession, until an adjustment of rights can be made by the court under the general railroad law. Montana Central R. Co. v. Helena & R. M. R. Co., 6 M 416, 420, 12 P 916.

#### References

Le Munyon v. Gallatin Valley R. Co., 60 M 517, 524, 199 P 915.

#### Collateral References

Railroads \$\frac{1}{2}, 80.
74 C.J.S. Railroads \$\ 101, 114.

(6510) Survey, annual work and completion of road. Every railroad corporation shall be required to complete fifteen miles upon each of its lines, branches, or extensions, each year subsequent to the passage of this chapter, in the case of companies already organized, and each year subsequent to the filing of articles of incorporation in the case of corporations hereafter organized. But organization under this chapter shall not be deemed to confer any right to any portion of its line as designated in its articles of incorporation on which a preliminary survey and location shall not have been made, and if such corporation shall fail to comply with the requirements of this section, it shall forfeit its charter, and all the rights and privileges conferred by said articles as to any incompleted portion of its line of road. Each railroad corporation shall complete the whole line of its road within five years from the passage of this chapter, in the case of corporations already organized, and within seven years from the date of filing articles of incorporation in the case of corporations hereafter organized. Upon the written application of any county attorney of a county through which the line of said road would pass, made to the district court, setting forth the alleged cause of such forfeiture, it shall be the duty of such court, after notice to the corporation, to examine the cause; and if, in his judgment, sufficient cause exists for such forfeiture, to declare and enforce the forfeiture.

History: En. Sec. 12, p. 101, Ex. L. 1873; re-en. Sec. 310, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 37, L. 1883; re-en. Sec. 688, 5th Div. Comp. Stat. 1887; amd. Sec. 896, Civ. C. 1895; re-en. Sec. 4277, Rev. C. 1907; re-en. Sec. 6510, R. C. M. 1921.

## Cross-References

Constructing drains across right of way, secs. 89-2407 to 89-2409.
Eminent domain, sec. 93-9901 et seq.

## Collateral References

Railroads \$32, 85. 74 C.J.S. Railroads \$\ 18, 123.

72-209. (6511) Railroads on reservations. Any railroad corporation now or hereafter organized under the laws of this state, for the purpose of building railroads which extend upon Indian or military reservations within this state, shall not forfeit its charter, or any rights or privileges, by reason of its failure to build and complete any portion of its road upon such reservations, until a grant of a right of way therefor has been obtained from the United States, or any parties authorized in that behalf, and thereafter the provisions of this chapter shall be applicable to said corporations.

History: En Sec. 689, 5th Div. Comp. re-en. Sec. 4278, Rev. C. 1907; re-en. Sec. Stat. 1887; re-en. Sec. 897, Civ. C. 1895; 6511, R. C. M. 1921.

72-210. (6512) May change location or grade. Whenever any corporation organized under this chapter shall find it necessary for the purpose of avoiding annoyance to public travel, or dangerous or difficult curves or grades, or unsafe or unsubstantial grounds or foundations, or for other reasonable causes, to change the location or grade of any portion of its road, such railroad corporation is hereby authorized to make such changes, not departing from the general route prescribed in the articles of incorporation.

History: En. Sec. 13, p. 102, Ex. L. 1873; re-en. Sec. 311, 5th Div. Rev. Stat. 1879; re-en. Sec. 690, 5th Div. Comp. Stat. 1887; re-en. Sec. 898, Civ. C. 1895; re-en. Sec. 4279, Rev. C. 1907; re-en. Sec. 6512, R. C. M. 1921.

## References

Briggs v. Great Northern Ry. Co., 92 M 463, 465, 15 P 2d 840.

#### Collateral References

Railroads©=86. 74 C.J.S. Railroads § 128 et seq.

Right to damages because of abandonment or relocation of railroad lines. 23 ALR 555.

72-211. (6513) May borrow money and secure payment. Any corporation organized under this chapter shall have power to borrow money on the credit of the corporation to an amount not exceeding its authorized capital stock, at a rate of interest to be agreed upon by the respective parties, and may execute bonds therefor in sums of not less than one hundred dollars, and secure the payment thereof by mortgage or pledge of the property and income of such corporation. And if the said mortgage shall so provide, it shall be and remain a valid lien upon all of the property of said corporation of whatever kind then existing, or that may thereafter be by it acquired, irrespective of the law now in force relating to chattel mortgages, and the same shall be taken, held, and enforced in the same manner as mortgages upon real estate now are held and enforced.

History: En. Sec. 14, p. 102, Ex. L. 1873; re-en. Sec. 312, 5th Div. Rev. Stat. 1879; re-en. Sec. 691, 5th Div. Comp. Stat. 1887; re-en. Sec. 899, Civ. C. 1895; re-en. Sec. 4280, Rev. C. 1907; re-en. Sec. 6513, R. C. M. 1921.

Collateral References
Railroads = 147-179.
74 C.J.S. Railroads § 246 et seq.

72-212. (6514) May buy and sell necessary real estate. Any such corporation may acquire by purchase or gift any lands in the vicinity of its road or through which the same may pass, so far as may be convenient or necessary to secure the right of way, or such as may be granted to aid in the construction of such road, and convey the same in such manner as the directors may prescribe, and all deeds and conveyances made by such corporation shall be signed by the president, under the seal of the corporation.

History: En. Sec. 15, p. 102, Ex. L. 1873; re-en. Sec. 313, 5th Div. Rev. Stat. 1879; re-en. Sec. 692, 5th Div. Comp. Stat. 1887; re-en. Sec. 900, Civ. C. 1895; re-en. Sec. 4281, Rev. C. 1907; re-en. Sec. 6514, R. C. M. 1921.

## Collateral References

Railroads \$\iffsize 62, 63, 81, 128.
74 C.J.S. Railroads \\$\\$74, 75, 115, 199
et seq.
44 Am. Jur. 285, Railroads, \\$\\$68 et seq.

72-213. (6515) May divert and cross streams and roads. It shall be lawful for such corporation, whenever it may be necessary in the construction of its road to cross any road or stream of water, to divert the same from its present location or bed; but such corporation shall, without unnecessary delay, place such road or stream in such condition as not to impair its former usefulness.

History: En. Sec. 16, p. 103, Ex. L. 1873; re-en. Sec. 314, 5th Div. Rev. Stat. 1879; re-en. Sec. 693, 5th Div. Comp. Stat. 1887; re-en. Sec. 901, Civ. C. 1895; re-en. Sec. 4282, Rev. C. 1907; re-en. Sec. 6515, R. C. M. 1921.

#### References

State ex rel. Bloomington v. District Court, 34 M 535, 541, 88 P 44.

Collateral References
Railroads 207.
74 C.J.S. Railroads § 185 et seq.

72-214. (6516) Principal office. Every such corporation shall, as soon as convenient after its organization, establish a principal office at some point on the line of its road, and may change the same at pleasure, giving public notice in one or more newspapers in the state having the largest circulation, and notice to the secretary of state of such establishment or change.

History: En. Sec. 17, p. 103, Ex. L. 1873; re-en. Sec. 315, 5th Div. Rev. Stat. 1879; re-en. Sec. 694, 5th Div. Comp. Stat. 1887; re-en. Sec. 902, Civ. C. 1895; re-en. Sec. 4283, Rev. C. 1907; re-en. Sec. 6516, R. C. M. 1921.

#### Collateral References

Railroads € 14. 74 C.J.S. Railroads § 8 et seq.

72-215. (6517) May maintain telegraph line. Any such corporation is hereby authorized to construct, maintain, and operate a telegraph line along its road. The provisions of this chapter concerning the grant for station buildings, workshops, depots, machine shops, switches, sidetracks, turntables, and water stations shall not apply to mineral lands of the United

States, or to lands reserved by the United States, nor to any lands as against the United States.

History: En. Sec. 18, p. 103, Ex. L. 1873; re-en. Sec. 316, 5th Div. Rev. Stat. 1879; re-en. Sec. 695, 5th Div. Comp. Stat. 1887; re-en. Sec. 903, Civ. C. 1895; re-en. Sec. 4284, Rev. C. 1907; re-en. Sec. 6517, R. C. M. 1921.

#### Collateral References

Railroads©=73(1). 74 C.J.S. Railroads § 98 et seq. 44 Am. Jur. 237, Railroads, §§ 25 et seq.

72-216. (6518) State not responsible for debts of railroad. Nothing in this chapter shall be construed to make the state, or any municipality therein, liable for any debts or obligations of any character which may be contracted by such corporations.

History: En. Sec. 19, p. 104, Ex. L. 1873; re-en. Sec. 317, 5th Div. Rev. Stat. 1879; re-en. Sec. 696, 5th Div. Comp. Stat. 1887; re-en. Sec. 904, Civ. C. 1895; re-en. Sec. 4285, Rev. C. 1907; re-en. Sec. 6518, R. C. M. 1921.

Collateral References

Railroads \$34. 74 C.J.S. Railroads § 32.

72-217. (6519) May increase capital stock. If the amount of the capital stock shall be found insufficient to enable any such corporation to construct its road, it shall be competent for the directors, upon a vote of the stockholders, to increase the stock to such sum as shall cover the expenses of the construction of its road.

History: En. Sec. 21, p. 104, Ex. L. 1873; re-en. Sec. 319, 5th Div. Rev. Stat. 1879; re-en. Sec. 698, 5th Div. Comp. Stat. 1887; re-en. Sec. 906, Civ. C. 1895; re-en. Sec. 4287, Rev. C. 1907; re-en. Sec. 6519, R. C. M. 1921.

Collateral References

Railroads \$15.
74 C.J.S. Railroads § 13.

72-218. (6520) May accept provisions of act of Congress. Any such corporations may accept the provisions of any act of Congress providing for the creation of bodies corporate for the purposes aforesaid, but such acceptance shall not impair or affect the legal or equitable rights of any creditor as they exist at the time of such acceptance.

History: En. Sec. 22, p. 104, Ex. L. 1873; re-en. Sec. 320, 5th Div. Rev. Stat. 1879; re-en. Sec. 699, 5th Div. Comp. Stat. 1887; re-en. Sec. 907, Civ. C. 1895; re-en. Sec. 4288, Rev. C. 1907; re-en. Sec. 6520, R. C. M. 1921.

Collateral References

Railroads \$6, 177. 74 C.J.S. Railroads \$\$ 11, 313.

72-219. (6521) Penalties—exorbitant and discriminatory rates—equipment requirements—posting rates—transporting dangerous materials with passengers—excessive speed—whistle and bell requirements—reports. If any railroad corporation within this state shall ask, charge, or demand any exorbitant rate of compensation for the transportation of any freight, baggage, express matter or passenger, or make any unjust discrimination in its rates, or shall neglect to provide comfortable and convenient cars or coaches for the transportation of its passengers and their baggage, or safe cars for the transportation of express matter and freight, or shall use any highly inflammable oils for lighting any car on its passenger trains, or shall willfully neglect to keep a table of its passenger tariff and

rates of freight conspicuously posted in each depot within this state, or shall transport within this state on any of its passenger cars any oil of vitriol, gunpowder, lucifer matches, nitroglycerine, glynon oil, nytroleum or blasting oil, or nitrate oil, or powder mixed with any such oil, or fibre saturated therewith, or duolin or giant powder, or blasting powder, or any other goods of a dangerous nature, or in any incorporated city or town in this state run any train at a rate of speed forbidden by the laws of this state, or the ordinances of such city or town, or run any train over any unsafe bridge, trestlework, or aqueduct in this state; or fail to have upon any locomotive in use by it in this state a bell and whistle in fit condition for use thereon; or shall permit any locomotive to approach any highway, road, or railroad crossing, without causing the whistle to be sounded at a point between fifty and eighty rods from the crossing, and the bell to be rung from said point until the crossing is reached; or shall willfully fail to make any report herein required, or which may be hereafter required by any law of this state, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined for the first offense in the sum of one thousand dollars, and for the second violation of the same provision, two thousand dollars, and for every other and further violation of any provision of which it has been twice before found guilty, a sum not less than five nor more than ten thousand dollars.

History: En. Sec. 23, p. 104, Ex. L. 1873; re-en. Sec. 321, 5th Div. Rev. Stat. 1879; re-en. Sec. 700, 5th Div. Comp. Stat. 1887; amd. Sec. 908, Civ. C. 1895; amd. Sec. 1, Ch. 66, L. 1903; re-en. Sec. 4289, Rev. C. 1907; re-en. Sec. 6521, R. C. M. 1921; amd. Sec. 1, Ch. 7, L. 1929.

NOTE.—The portion of this section held void for uncertainty in Jarvella v. Northern Pacific Ry. Co., 101 M 102, 110, 53 P 2d 446, is omitted from this compilation.

Section 94-35-175 provides a minimum penalty for violation of this section which is different from the minimum penalty herein provided.

## Contributory Negligence

A railroad company's failure to obey the requirements of the statute does not excuse the citizen from the use of at least ordinary diligence and prudence. Hunter v. Montana Central Ry. Co., 22 M 525, 531, 57 P 140; Sprague v. Northern Pacific Ry. Co., 40 M 481, 489, 107 P 412.

# Effect of Specific Indemnity Clause in Lease

A specific indemnity clause in a lease agreement between a railroad and a lessee which provided that the lessee would indemnify the railroad for claims, "whether due or not due to the negligence" of the railroad, was not invalid as applied to the allegations in a complaint by a person seeking recovery from the railroad for injuries allegedly received because of a violation of this section by the railroad. Ryan

Mercantile Co. v. Great Northern Ry. Co., 186 F Supp 660, affirmed in 294 F 2d 629.

## Portion Void for Uncertainty

The portion of this section making it incumbent upon a railroad company to light its tracks in any city in the state, without indicating where lights must be installed or the kind or character of lights to be used, being penal in nature is so vague and uncertain as to render it void. Jarvella v. Northern Pacific Ry. Co., 101 M 102, 110, 53 P 2d 446.

#### Warning Signal

It is negligence for a railroad to permit its trains to approach a crossing without sounding the whistle and ringing the bell. Hunter v. Montana Central Ry. Co., 22 M 525, 531, 57 P 140, explained in 39 M 50, 60, 101 P 243. See Kelley v. John R. Daily Co., 56 M 63, 72, 181 P 326.

Evidence that shows a violation, by a railroad company, of the provisions of this section, in failing to give proper signals of the approach of its trains at crossings, makes out a prima-facie case of negligence. Hunter v. Montana Central Ry. Co., 22 M 525, 531, 57 P 140; Sprague v. Northern Pacific Ry. Co., 40 M 481, 489, 107 P 412; De Atley v. Northern Pacific Ry. Co., 42 M 224, 230, 112 P 76. See Kelley v. John R. Daily Co., 56 M 63, 72, 181 P 326.

A railroad company, whose employees in charge of a train fail, upon approaching the crossing of a highway, to observe the precautions required by this section for the protection of the public, is chargeable with negligence; and there can be no distinction between the effect of a statute designed to protect the public generally at railroad crossings, and one, such as section 94-35-126, designed to secure safety to servants engaged in hazardous occupa-tions. Monson v. La France Copper Co., 39 M 50, 61, 101 P 243.

Failure on the part of a railway company to cause the locomotive whistle to be sounded at a point between fifty and eighty rods from a crossing, and the bell to be rung at a point within eighty rods before reaching the crossing as required by this section, constitutes actionable negligence. Sprague v. Northern Pacific Ry. Co., 40 M 481, 489, 107 P 412. See Kelley v. John R. Daily Co., 56 M 63, 72, 181 P 326.

A variance between an averment that defendant railroad was negligent in failing to give any warning of the approach of one of its trains, and evidence which tended to show that, while warning was given, it was not until the train was with-in about one hundred feet from the crossing, was immaterial. De Atley v. Northern Pacific Ry. Co., 42 M 224, 230, 112 P 76.

Where a person, seeing a train approaching, is killed in an endeavor to effect a crossing ahead of the train, failure of the enginemen to ring the locomotive bell or sound the whistle, though punishable as a misdemeanor, is not a proximate cause of the death. Melzner v. Chicago, M. & St. P. R. Co., 51 M 487, 492, 153 P 1019.

Failure of a railway company to comply with the statute requiring the blowing of the locomotive whistle and sounding of the bell on approaching a street crossing is negligence per se. Stroud v. Chicago, M. & St. P. R. Co., 75 M 384, 243 P 1089.

The burden of proving that defendant railway company's enginemen on approaching a highway crossing did not sound the locomotive whistle or ring the bell may be sustained by plaintiff's negative testimony, provided the attendant circumstances were such as to have afforded him a reasonable opportunity to hear the warning signals, if given. Grant v. Chicago, M. & St. P. R. Co., 78 M 97, 110, 252 P 382.

While it may be conceded that a locomotive engineer who on approaching a crossing observes that the signals which he is required to give by statute (this section) are not heard or that his train is not seen by one crossing, he must give such additional signals as an ordinarily prudent man would deem necessary, refusal to give such an instruction held not error as not warranted by the evidence. Norton v. Great Northern Ry. Co., 85 M 270, 280, 290, 278 P 521.

Failure of railroad employees in charge of engine to sound whistle was not proximate cause if collision where motorist struck unlighted second passenger car of train stopped on crossing; the mere alleged failure of signal at crossing to function at time of collision was not evidence of negligence on part of railroad where it inspected signals daily and found no defect in them and where they were in good order and functioned properly a few hours before and a few hours after collision, and in absence of knowledge, the railroad was not under duty to place servant or light or other signal at or near crossing to warn of presence of train on crossing. Northern Pacific Ry. Co. v. Bacon, 91 F 2d 173, 175, cert. den. 302 U S 730, 82 L Ed 564, 58 S Ct 55.

### References

Rau v. Northern Pacific Ry. Co., 87 M 521, 535, 289 P 580; Sullivan v. Northern Pacific Ry. Co., 109 M 93, 105, 94 P 2d 651.

#### Collateral References

Carriers 20, 21; Railroads 212, 254, 255.

13 C.J.S. Carriers §§ 514 et seq., 569; 74 C.J.S. Railroads §§ 31, 194, 437 et seq., 456 et seq.; 75 C.J.S. Railroads § 1005.

**72-220.** (6522) **Annual report—what to contain.** It is hereby made the duty of the president or other officer in charge of each and every railroad corporation having a line of railroad in this state, to make an annual report to the state auditor for the year ending on the thirtieth day of November preceding, which report shall be verified by the oath or affirmation of such president or other officer in charge, and be filed in the office of the state auditor by the first day of December in each year, and shall state:

- The amount of capital stock paid in;
- The amount of capital stock unpaid;
- 3. The amount of funded debt;
- The amount of floating debt;
- Cost of construction;
- Cost of right of way;

- 7. Cost of equipment;
- 8. All other items embraced in cost of road and equipment, not embraced in three preceding items;
  - 9. Total cost of road and equipments to date;
  - 10. Length of single main track, laid with iron or steel;
  - 11. Length of double main track, and width of gauge;
- 12. Length of branches, stating whether they have single or double tracks;
- 13. Aggregate length of sidings, and other tracks not above enumerated; total length of iron and steel, each separately stated, embraced in preceding items;
- 14. The maximum grade, with its length in main road, and also in branches:
- 15. The shortest radius of curvature, with length of curve in main road, and also in branches;
  - 16. Total degrees of curvature in main road, and also in branches;
  - 17. Total length of straight line in main road, and also in branches;
  - 18. Number of wooden bridges, and aggregate length in feet;
  - 19. Number of iron bridges, and aggregate length in feet;
  - 20. Number of stone bridges, and aggregate length in feet;
  - 21. The number of wooden trestles, and aggregate length in feet;
  - 22. The greatest age of wooden bridges;
  - 23. The average age of wooden bridges;
  - 24. The greatest age of wooden trestles;
- 25. The number and kind of new bridges built during the year, and length in feet;
  - 26. The length of road unfenced on either side, and the reason therefor;
  - 27. Number of engines;
  - 28. Number of passenger cars;
  - 29. Number of express and baggage cars;
  - 30. Number of freight cars;
  - 31. Number of other cars:
  - 32. The highest rate of speed allowed by express and passenger trains;
- 33. The highest rate of speed allowed by mail and accommodation trains:
  - 34. The highest rate of speed allowed by freight trains;
- 35. The rate of fare for passengers charged for the respective classes per mile;
- 36. The highest rate per ton per mile charged for the transportation of the various classes of freight, through and local;
  - 37. The length of new iron or steel laid during the year;
  - 38. The length of rerolled iron laid during the year;
  - 39. The number of miles run by passenger trains;
  - 40. The number of miles run by freight trains;
  - 41. The number of passengers (all classes), carried in cars;
  - 42. The number of tons of through freight carried;
  - 43. The number of tons of local freight carried;
  - 44. The number of tons of ore, cattle, and grain transported;
  - 45. The value of coin, bullion, and dust carried;

- 46. Earnings from transportation of passengers;
- 47. Earnings from transportation of freight;
- 48. Earnings from mail and express;
- 49. Earnings from all sources. Total earnings for the year;
- 50. Expenditures for construction and new equipments;
- 51. Expenditures for maintenance of way and structure;
- 52. Expenditures for maintaining and operating motive power and cars;
- 53. Expenditures for transportation expenses, including those of stations and trains;
  - 54. Expenditures for dividends, rate per cent; and amount;
- 55. All other expenditures, either for management of road, maintenance of way, motive powers, and cars, and for other purposes. Total expenditure during the year;
- 56. The number and kind of farm animals killed, and the amount of damages paid therefor;
- 57. A statement of all casualties resulting in injuries to persons, and the extent and causes thereof, and such other and further information as may be required by the state auditor; but if any corporation shall be unable to furnish the required information, the reason thereof shall be given. The state auditor shall prepare and furnish to each railroad corporation, or to each organization having one or more railroads in charge, blank forms for making the reports required by this chapter, which blanks may be so prepared by the auditor as to obtain the information required by this section more in detail, or omit such of a historical or permanent character as may have been given in previous reports.

History: En. Sec. 24, p. 106, Ex. L. 1873; re-en. Sec. 322, 5th Div. Rev. Stat. 1879; re-en. Sec. 701, 5th Div. Comp. Stat. 1887; re-en. Sec. 909, Civ. C. 1895; re-en. Sec. 4290, Rev. C. 1907; re-en. Sec. 6522, R. C. M. 1921. Cal. Civ. C. Sec. 480.

## References

Daly Bank & Trust Co. v. Great Falls Street R. Co., 32 M 298, 303, 80 P 252.

#### Collateral References

Railroads \$29.

72-221. (6523) May extend line into Montana. Any railroad corporation chartered by or organized under the laws of the United States, or of any state or territory whose line of railroad shall reach or intersect the boundary line of this state at any point, may extend its railroad into this state from any such point or points to any place or places within the state, and may build branches from any point on such extension or continuation of any such extension or branch. Before making such extension into the state, or building any such branch road, or any such continuation, such corporation shall, by resolution of its board of directors, to be entered in the records of its proceedings, designate the general route of such proposed extension, branch, or continuation, in the manner provided in sections 15-108 and 15-109, and file a copy of such record, certified by the president and secretary, in the office of the secretary of the state, who shall record the same when presented for record. Thereupon such corporations shall have all the rights, powers, privileges, immunities, and franchises to make, maintain, and operate such extension, and build, maintain, and operate such branch or continuation, which it would have had if it had been

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incorporated for such purposes under the general laws of the state or territory of Montana.

History: En. Sec. 702, 5th Div. Comp. Stat. 1887; re-en. Sec. 910, Civ. C. 1895; re-en. Sec. 4291, Rev. C. 1907; re-en. Sec. 6523, R. C. M. 1921.

#### References

Pue v. Northern Pacific Ry. Co., 78 M 40, 43, 252 P 313.

## Collateral References

Railroads \$33(1).
74 C.J.S. Railroads \$19 et seq.

(6524) Two or more may consolidate. Any two or more railroad corporations whose respective lines, not being parallel or competing lines, are wholly or partly within this state, whether chartered by or organized under the laws of the state or territory of Montana, or of the United States, or of any other state or territory, when their respective lines of road or any branch thereof so connect within this state that they may operate together as one property, may consolidate their capital stock, franchises, and property, and thereby become one corporation by any name adopted by them, which may be that of one of them, upon such terms and conditions as may be agreed upon by them, in the manner following: Articles of agreement shall be entered into by and between such corporations under their respective corporate seals and the signatures of their respective presidents and secretaries, containing the terms and conditions of such consolidation and the mode of carrying the same into effect, including the name of the corporation resulting from such consolidation, the amount of its capital stock, the number and amount of shares thereof, the manner of retiring the shares of the capital stock of the corporations so consolidated, or of converting the same into or exchanging it for the capital stock of such resultant corporation, the number which shall constitute the board of directors of such corporation, and what officers it shall have, and the persons who shall constitute the first board of directors and officers thereof, their term of office, and the manner in which their successors shall be elected, which shall be according to the provisions of section 15-405, and such other matters as may be deemed necessary to perfect such consolidation, and as may be agreed upon. Such articles of agreement shall, before the same shall be effectual, be assented to, approved, or ratified by the stockholders of the respective corporations so consolidated at a regular meeting of such stockholders, or a special meeting thereof, duly called and held, by resolution adopted by a vote in favor thereof, in person or by proxy, of the holders of at least three-fifths in amount of the outstanding capital stock of such corporations, respectively.

A duplicate of such articles of agreement, together with a copy of the resolutions so adopted by the stockholders of such corporations assenting to, approving, or ratifying the same, certified under the corporate seal and the signature of the secretary, and verified by a sworn statement of the president and secretary of the corporation, stating that such resolution was duly adopted by the vote in favor thereof of the holders of three-fifths in amount of the outstanding capital stock of the corporation, at a meeting of the stockholders thereof, duly held, shall be recorded in the office of the secretary of state, and it shall be the duty of the secretary

to record the same upon presentation for that purpose; and upon the filing thereof for record, as aforesaid, the corporation formed by such consolidation shall be a corporation by the corporate name mentioned in such articles of agreement, and as such shall be perpetual, and shall succeed to and have, own, possess, exercise, and enjoy all the powers, rights, franchises, privileges, immunities, and property of every name and nature possessed by the corporations so consolidated, or to which they were entitled at the time of such consolidation, and shall be entitled to have, own, hold, exercise, possess, and enjoy all the powers, rights, franchises, privileges, and immunities which may at any time appertain to railroad corporations under the general laws of this state.

History: En. Sec. 703, 5th Div. Comp. Stat. 1887; re-en. Sec. 911, Civ. C. 1895; re-en. Sec. 4292, Rev. C. 1907; re-en. Sec. 6524, R. C. M. 1921. Cal. Civ. C. Sec. 473.

## Parallel and Competing Roads

The provisions of this section and section 72-223 which limit the right of railroad companies to lease their roads to one another to such companies as are not parallel or competing roads were repealed by section 72-229. State ex rel. Nolan v. Montana Ry. Co., 21 M 221, 233, 53 P 623.

This section is not merely a legislative declaration of the manner of consolidation, but serves as a definition as well. State ex rel. Nolan v. Montana Ry. Co., 21 M 221, 242, 53 P 623.

#### Collateral References

Railroads ← 140-144. 74 C.J.S. Railroads § 234 et seq. 44 Am. Jur. 539, Railroads, §§ 316 et seq.

Judicial power in respect to consolidation or merger of railroads. 51 ALR 1249.

(6525) May lease or purchase other railroads. Any railroad corporation whose line is wholly or party within this state, or reaches the boundary line thereof, whether chartered by or organized under the laws of the state or territory of Montana, or the United States, or of any other state or territory, may lease or purchase the whole or any part of the railroad or line of railroad of any railroad corporation, constructed or unconstructed, together with all the rights, powers, immunities, privileges, franchises, and all other property or appurtenances thereto; provided, the railroad or line of railroad so leased or purchased is continuous of or connected with its own line, and not a parallel or competing line. Before any such lease or purchase shall be effectual, it shall be assented to or approved or ratified by the stockholders of each corporation by a vote in favor thereof, at a general or special meeting of such stockholders, by the holders of three-fifths in amount of all the outstanding capital stock of the company; and any such railroad corporation, whether chartered by or organized under the laws of the state or territory of Montana, or of the United States, or of any other state or territory, may take, purchase, hold, sell, and dispose of, or guarantee the payment of the capital stock, bonds, and securities of any other railroad corporation whose line of railroad within this state is continuous of or connects with its own line. Leases heretofore made in conformity to the provisions of this chapter shall, when ratified as herein provided, be held valid in like manner as if made by authority thereof.

History: En. Sec. 704, 5th Div. Comp. Stat. 1887; re-en. Sec. 912, Civ. C. 1895; re-en. Sec. 4293, Rev. C. 1907; re-en. Sec. 6525, R. C. M. 1921. Cal. Civ. C. Sec. 473a.

## References

State ex rel. Nolan v. Montana Ry. Co., 21 M 221, 229, 233, 53 P 623.

Collateral References

Railroads €= 125-134. 74 C.J.S. Railroads §§ 199, 208. 44 Am. Jur. 551, Railroads, §§ 327 et seq. Liability of lessee of railroad for debts of predecessor. 15 ALR 1112 and 149 ALR 787.

Public utility commission's power to require railroad company to grant or renew leases or other privileges. 47 ALR 109.

72-224. (6526) May issue and secure bonds. Any railroad corporation whose line is wholly or partly within this state, whether chartered by or organized under the laws of the state or territory of Montana, or of the United States, or of any other state or territory, shall have authority and power to make, issue, negotiate, and deliver its bonds, securities, or obligations to such amount, not exceeding its authorized capital stock, bearing such rate of interest and payable at such time or times as its board of directors shall determine, and may negotiate, sell, pledge, or otherwise dispose of the same at such price, and on such terms, and in such manner as its board of directors may authorize or determine; and to secure the payment of all or any of such bonds, securities, or obligations, and the interest thereon, may make, execute, and deliver such mortgages or deeds of trust upon all or any part of its property, income, and franchises, as the board of directors may determine or direct; and if any such mortgage or deed of trust shall so provide, and to the extent it shall provide, it shall be and remain a valid lien upon the property, rights, and franchises of the corporation of whatever nature or kind afterwards acquired, as well as upon property, rights, and franchises owned or possessed by the corporation at the time of its execution, irrespective of the law relating to chattel mortgages, and any such mortgage or deed of trust shall be taken, held, and enforced in the same manner as mortgages of real estate; and the record thereof in the office of the secretary of state shall be notice of its existence and contents to all persons, without any further record thereof, and it shall be the duty of the secretary to record in his office any such mortgage or deed of trust, when presented for that purpose.

History: En. Sec. 706, 5th Div. Comp. Stat. 1887; re-en. Sec. 913, Civ. C. 1895; re-en. Sec. 4294, Rev. C. 1907; re-en. Sec. 6526, R. C. M. 1921.

# References

State ex rel. Nolan v. Montana Ry. Co., 21 M 221, 229, 53 P 623.

#### Collateral References

Railroads € 149-153. 74 C.J.S. Railroads § 249 et seq.

72-225. (6527) Judgment as lien against property. A judgment against any railroad corporation for any injury to person or property, or for material furnished, or work or labor done upon any of the property of such corporation, shall be a lien within the county where recovered on the property of such corporation, and such lien shall be prior and superior to the lien of any mortgage or trust deed provided for in this chapter.

History: En. Sec. 707, 5th Div. Comp. Stat. 1887; re-en. Sec. 914, Civ. C. 1895; re-en. Sec. 4295, Rev. C. 1907; re-en. Sec. 6527, R. C. M. 1921.

## Operation and Effect

This section has no application to street railroads. Daly Bank & Trust Co. v. Great Falls Street R. Co., 32 M 298, 303, 80 P 252; Helena Light & R. Co. v. City of Helena, 47 M 18, 36, 130 P 446; Massachusetts Loan & Trust Co. v. Hamilton, 88 Fed 588, 595; Central Trust Co. v. Warren, 121 Fed 323, 324.

## Collateral References

Railroads \$\footnote{159-161}, 171.
74 C.J.S. Railroads \\$\\$ 267 et seq., 295 et seq.

72-226. (6528) Amendment of certificate of incorporation. Any corporation heretofore formed, or which may hereafter be formed, under the provisions of chapter twenty-five, of the fifth division of the Compiled Statutes of Montana, relating to railway corporations, may, by a majority vote of its board of directors, and by the assent of its stockholders, representing at least two-thirds of the subscribed capital stock of such corporation, expressed in writing, or at a general or special meeting of stockholders, amend its certificate of incorporation in any one or more of the following particulars, to wit: By more particularly describing the general route of its road, or any part thereof, or by correcting or supplying any defect, mistake, or insufficiency in the description thereof, contained in said certificate, by describing any change or changes in its route, or any additions or extensions to or of its line of road, by adding thereto or extending the same to points or termini other than those mentioned in the original certificate of incorporation.

History: En. Sec. 1, p. 147, L. 1893; re-en. Sec. 920, Civ. C. 1895; re-en. Sec. 4296, Rev. C. 1907; re-en. Sec. 6528, R. C. M. 1921.

NOTE.—The provisions referred to in this section are of the Compiled Statutes of Montana, 1887, Sections 677 through 708. Sections 677 through 679 do not appear in subsequent compilations.

Collateral References
Railroads = 19.

Railroads 19. 74 C.J.S. Railroads § 18.

72-227. (6529) Record of amendment. A copy of such amendment or of the original certificate of incorporation, as amended, and a copy of the resolution of the board of directors adopting the same, certified by the president and secretary of the company, under the corporate seal, to be correct and to have been adopted by a majority vote of the directors of the company, and to have been assented to in writing or by vote of stockholders representing at least two-thirds of the subscribed capital stock of the company, shall be filed with and recorded by the secretary of state; and a like copy, certified as aforesaid, shall be filed with and recorded by the county clerk and recorder of the county in which the principal place of business of the company is or shall be situated; and from the time of such filing, said original certificate of incorporation shall be deemed to be amended accordingly, and said corporation shall have the same rights and powers, and it and the stockholders thereof shall be subject to the same liabilities, as if such amendment had been embraced in the original articles or certificate of incorporation.

History: En. Sec. 2, p. 147, L. 1893; 4297, Rev. C. 1907; re-en. Sec. 6529, R. C. re-en. Sec. 921, Civ. C. 1895; re-en. Sec. M. 1921.

**72-228.** (6530) Amended certificate may be amended. Said certificate and amended certificate may be amended in like manner, whenever deemed expedient or necessary by the board of directors and stockholders of the company.

History: En. Sec. 3, p. 147, L. 1893; 4298, Rev. C. 1907; re-en. Sec. 6530, R. C. re-en. Sec. 922, Civ. C. 1895; re-en. Sec. M. 1921.

72-229. (6531) May lease or buy other railroads. Any railroad company now or hereafter incorporated pursuant to the laws of this state, or of the United States, or of any state or territory of the United States, may at any time, by means of subscription to the capital stock of any other rail-

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road company, or by the purchase of its stock or bonds, or by guaranteeing its bonds, or otherwise, aid such company in the construction of its railroad within or without this state; and any company owning or operating a railroad within this state may extend the same into any other state or territory, and may build, buy, lease, or may consolidate with any railroad or railroads in such other state or territory, or with any other railroad in this state, and may operate the same, and may own such real estate and other property in such other state or territory as may be necessary or convenient in the operation of such road; or any railroad company may sell or lease the whole or any part of its railroad or branches within this state constructed or to be constructed, together with all property and rights, privileges, and franchises pertaining thereto, to any railroad company organized or existing pursuant to the laws of the United States, or of this state, or of any other state or territory of the United States; or any railroad company incorporated or existing under the laws of the United States, or of any state or territory of the United States, may extend, construct, maintain, and operate its railroad, or any portion or branch thereof, into and through this state, and may build branches from any point, or such extension to any place or places within this state; and the railroad company of any other state or territory of the United States which shall so purchase or lease a railroad, or any part thereof in this state, or shall extend or construct its road, or any portion or branch thereof, in this state, shall possess and may exercise and enjoy, as to the control, management, and operation of the said road, and as to the location, construction, and operation of any extension or branch thereof all the rights, powers, privileges, and franchises possessed by railroad corporations organized under the laws of this state, including the exercise of the power of eminent domain.

Such purchase, sale, consolidation with or lease, may be made, or such aid furnished, upon such terms or conditions as may be agreed upon by the directors or trustees of the respective companies; but the same shall be approved or ratified by persons holding or representing a majority in amount of the capital stock of each of such companies, respectively, at any annual stockholders' meeting, or at a special meeting of the stockholders called for that purpose, or by approval in writing of a majority in interest of the stockholders of each company respectively; provided, that nothing in the foregoing provisions shall be held or construed as curtailing the right of this state, or the counties through which any such road or roads may be located, to levy and collect taxes upon the same, and upon the rolling stock thereof, in conformity with the provisions of the laws of this state upon that subject; and all roads or branches thereof in this state, so consolidated with, purchased, or leased, or aided, or extended into the state, shall be subject to taxation and to regulation and control by the laws of this state, in all respects the same as if constructed by corporations organized under the laws of this state; and any corporation of another state or territory or of the United States, being the purchaser or lessee of a railroad within this state, or extending its railroad, or any portion thereof, into or through this state, shall establish and maintain an office or offices, in this state at some point or points on its line, at which legal process

and notice may be served, as upon railroad corporations of this state; provided, further, that before any railroad corporation organized under the laws of any other state or territory or of the United States shall be permitted to avail itself of the benefits of this act, such corporation shall file with the secretary of state a true copy of its charter or articles of incorporation.

History: En. Sec. 1, p. 157, L. 1893; re-en. Sec. 923, Civ. C. 1895; re-en. Sec. 4299, Rev. C. 1907; re-en. Sec. 6531, R. C.

#### Filing of Charter or Articles

If a foreign railroad company, engaged as a common carrier of passengers between different states, seeks to engage in interstate commerce in this state, buys or is about to buy out another railroad, and seeks to avail itself of the benefits of this section, which requires the filing of its charter or articles of incorporation with the secretary of state, it is not obliged to pay a fee, under section 25-102, for the filing of articles of incorporation, on the basis of a percentage of its entire capital stock; the exaction of such a fee would be an unauthorized burden upon interstate commerce. Chicago, M. & St. P. R. Co. v. Swindlehurst, 47 M 119, 126, 130 P 966. See State ex rel. General Electric Co. v. Alderson, 49 M 29, 31, 140 P 82.

## Parallel and Competing Roads

This section was continued in force after the adoption of this code, and repeals sections 72-222 and 72-223, ante, so far as these latter sections limit the right of railroad companies to lease their roads to one another to such companies as are not parallel or competing roads. State ex rel. Nolan v. Montana Ry. Co., 21 M 221, 233, 53 P 623.

Under this section, one railroad company can lease its road to a parallel and competing road for a term of ten years, and such lease is not a consolidation of the two roads within the meaning of the constitution. This section is to be read as merely authorizing the amalgamation or consolidation of railroads not forbidden to amalgamate or consolidate by the constitution. State ex rel. Nolan v. Montana Ry. Co., 21 M 221, 234, 53 P 623.

72-230. (6532) Prior consolidation, sale or lease legalized. Any consolidation by sale or otherwise, or any lease or agreement to sell, consolidate with, or lease the whole or any part of any railroad and its branch lines organized under the laws of this state, with the franchise appertaining thereto, to any railroad company organized or existing under the laws of the United States, or of this state, or any other state or territory, or any consolidation between such companies organized under the laws of the United States, or of this state, or any other state or territory, and a corporation organized under the laws of this state, heretofore executed by the proper officers of the companies, parties to such sale, lease, or consolidation or contract, is hereby legalized and made in all respects valid and binding from the date of its execution.

History: En. Sec. 2, p. 158, L. 1893; re-en. Sec. 924, Civ. C. 1895; re-en. Sec. 4300, Rev. C. 1907; re-en. Sec. 6532, R. C. M. 1921.

# Collateral References

Railroads = 125-134, 140-144. 74 C.J.S. Railroads §§ 208, 235 et seq.

# CHAPTER 3

#### LEASES, SALES AND MORTGAGES OF RAILROAD EQUIPMENT AND ROLLING STOCK

Section 72-301. Repealed.

72-302. Repealed.

72-303. Chattel mortgage.

72-304. Repealed.

72-305. Conditional sale of equipment—effect of—requirements.

72-306. Contract to be recorded. 72-307. Construction and effect of law.

72-301, 72-302. (6533, 6534) Repealed—Chapter 53, Laws of 1947.

72-303. (6535) Chattel mortgage. Any mortgage of personal property which constitutes the equipment, or part of the equipment, of any railroad company, may be recorded and satisfied as provided in sections 72-305 and 72-306, and if the same is bona fide, the lien thereby created shall be good for all intents and purposes whatever, for such length of time as therein provided and if no other time is provided in such mortgage, then the lien thereby created shall be good for all intents and purposes whatever for eight (8) years after maturity of the entire debt or obligation secured thereby.

History: En. Sec. 3, p. 102, L. 1883; re-en. Sec. 711, 5th Div. Comp. Stat. 1887; re-en. Sec. 932, Civ. C. 1895; re-en. Sec. 4303, Rev. C. 1907; re-en. Sec. 6535, R. C. M. 1921; amd. Sec. 1, Ch. 53, L. 1947.

# Collateral References

Railroads \$286.

#### Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 92 (Fall 1959).

72-304. (6536) Repealed—Chapter 53, Laws of 1947.

72-305. (6537) Conditional sale of equipment—effect of—requirements. In any contract for the sale of railroad or street-railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase money, and in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract may, as paid, be applied and treated as purchase money, and that the title to the property shall not vest in the lessee or bailee until the purchase price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; provided, that no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice unless:

- 1. The same shall be evidenced by an instrument executed by the parties, and duly acknowledged by the vendee, or lessee, or bailee, as the case may be, or duly proved, before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are acknowledged or proved;
- 2. Such instrument shall be filed for record in the office of the secretary of state of this state, and in cases in which the line of such railroad or street railway company lies wholly within one county, also in the office of the county clerk and recorder of said county.
- 3. Each locomotive engine or car so sold, leased, or hired, or contracted to be sold, leased, or hired as aforesaid, shall have the name of the vendor, lessor, or bailor, plainly marked on each side thereof, followed by the word "owner" or "lessor," or "bailor," as the case may be.

History: En. Sec. 1, p. 148, L. 1893; 4305, Rev. C. 1907; re-en. Sec. 6537, R. C. M. 1921; amd. Sec. 1, Ch. 148, L. 1923. re-en. Sec. 934, Civ. C. 1895; re-en. Sec.

72-306. (6538) Contract to be recorded. The contracts herein authorized shall be recorded by the secretary of state in a book of records to be kept for that purpose, and on payment in full of the purchase money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor, or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be by a separate instrument to be acknowledged by the vendor, lessor, or bailor, or his or its assignee, and recorded as aforesaid, and for such services the secretary of state shall be entitled to a fee of fifteen dollars, for recording each of said contracts and each of said declarations, and a fee of two dollars (\$2.00) for noting such declaration on the margin of the record.

History: En. Sec. 2, p. 149, L. 1893; re-en. Sec. 935, Civ. C. 1895; re-en. Sec. 4306, Rev. C. 1907; re-en. Sec. 6538, R. C. M. 1921; amd. Sec. 14, Ch. 117, L. 1961. Collateral References Railroads = 127, 132, 165. 74 C.J.S. Railroads §§ 204, 206, 286.

72-307. (6539) Construction and effect of law. This act shall not be held to invalidate or affect in any way any contract or mortage heretofore made of the kind referred to in sections 72-303 and 72-305 and any such contract or mortgage heretofore made, may, upon compliance with the provisions of this act, be recorded as herein provided.

History: En. Sec. 3, p. 149, L. 1893; re-en. Sec. 936, Civ. C. 1895; re-en. Sec. 4307, Rev. C. 1907; re-en. Sec. 6539, R. C. M. 1921; amd. Sec. 2, Ch. 53, L. 1947.

Collateral References Railroads 119, 165 74 C.J.S. Railroads §§ 199, 286.

# CHAPTER 4

## LIABILITY OF RAILROADS FOR KILLING OR INJURING LIVESTOCK

Section 72-401. Fences and cattle guards.

72-402. Liable for injury from negligence.
72-403. Designation of station where records are kept.
72-404. Penalty for violation of preceding section.
72-405. Attorney's fee allowed, except when.

72-406. Company may deposit value of animal.

72-407. Payment of claim for damages to state livestock commission. 72-408. Penalty for driving animal or animals upon track.

72-409. Carcass and hide of animal. 72-410. Penalty for violation.

72-411. Shipment of livestock-notice of injury.

72-401. (6540) Fences and cattle guards. Railroad corporations must make and maintain a good and legal fence on both sides of their track and property, and maintain, at all crossings, cattle guards over which cattle or other domestic animals cannot pass. In case they do not make and maintain such fence and guards, if their engines or cars shall kill or maim any cattle or other domestic animals upon their line of road, they must pay to the owner of such cattle or other domestic animals, in all cases, a fair market price for the same, unless it occurred through the neglect or fault of

the owner of the animal so killed or maimed; provided, that nothing herein shall be construed so as to prevent any person or persons from recovering damages from any railroad corporation for its negligent killing or injury to any cattle, or other domestic animals, at spurs, sidings, Y's, crossings, and turntables.

History: Ap. p. Sec. 1, p. 267, L. 1891; en. Sec. 950, Civ. C. 1895; amd. Sec. 1, Ch. 29, L. 1905; amd. Sec. 1, Ch. 59, L. 1907; re-en. Sec. 4308, Rev. C. 1907; re-en. Sec. 6540, R. C. M. 1921. Cal. Civ. C. Sec. 485.

#### Cross-References

Eminent domain, cost of cattle guards and fences, secs. 93-9912, 93-9917.

Failure to maintain cattle guard, penalty, sec. 94-35-174.

Killing of livestock by railroads, penalty, sec. 94-35-174.

Penalty for failure to provide cattle guards at crossings through fences, sec. 72-

Penalty for violations, sec. 94-35-174.

## Duty as to Private Crossing and Gate

Where, for the convenience of a ranch owner, a railroad company constructed a private crossing and a gate in its right of way, the company was, under this section, in duty bound to see that it was not left open by persons passing through it; failure in this respect constituting negligence per se. Scheffer v. Chicago, M. & P. S. R. Co., 53 M 302, 305, 163 P 565.

# General Duty to Fence

The duty to fence railway tracks may exist, not by virtue of the fencing statute, but because of the railway company's common-law obligation to exercise ordinary care to furnish its employees with a reasonably safe place in which to work, and whether it does exist depends upon the presence of circumstances which may render such precaution necessary. Alexander v. Great Northern Ry. Co., 51 M 565, 575, 154 P 914, appeal dismissed in 246 U S 276, 62 L Ed 713, 38 S Ct 237.

#### Highway Crossings

This section, making it incumbent upon railroads to maintain good and legal fences on both sides of their track and property, impliedly excepts highway crossings, at which, however, they must install cattle guards made effective by wing fences on both sides of the highway. Bowers v. Chicago, M. & St. P. R. Co., 61 M 200, 206, 201 P 825.

# Not Applicable to Sidings or Spurs

Under this section a railroad company is not required to fence its tracks at spurs or sidings, and is liable for injuries to livestock at such places only where its actual negligence is established. Knop v.

Chicago, M. & St. P. R. Co., 57 M 288, 187 P 1020.

# Not Applicable to Station Grounds

No duty devolves upon a railroad company to fence at a station under statutes of this nature. Beaudin v. Oregon Short Line R. Co., 31 M 238, 241, 78 P 303. Railroad tracks at depot and station

grounds where passengers and freight are received and discharged, where employees are required to pass continuously back and forth, and where public convenience requires free and unobstructed access, are impliedly excepted from the requirements of fencing made by this section. Bowers v. Chicago, M. & St. P. R. Co., 61 M 200, 206, 201 P 825.

## Not Liable for Death of Child for Failure to Fence

The failure of a railroad company to maintain a fence along its track does not render it liable, on that ground, for the death of a child, who entered upon the unfenced track and was run over by a train and killed. Nixon v. Montana, W. & S. Ry. Co., 50 M 95, 101, 145 P 8.

# Sufficiency of Complaint

In an action against a railroad company for the killing of livestock, it is necessary that the complaint allege plaintiff's own-ership or possession of land along or through which the railroad runs, and that the stock was killed at such place. Beaudin v. Oregon Short Line R. Co., 31 M 238, 241, 78 P 303; Metlen v. Oregon Short Line R. Co., 33 M 45, 46, 81 P 737. No allegation of defendant's negligence

in the operation of its trains is necessary to render it liable under statutes of this character. Beaudin v. Oregon Short Line R. Co., 31 M 238, 241, 78 P 303.

Where, in an action against a railroad company for killing livestock, the only evidence was that the animals were found near the track, one dead and the other injured so badly that it had to be killed, and no showing was made as to the character of the injuries except that one had its legs broken, such evidence was insufficient to show that the animals were killed by an engine or cars of defendant. Beaudin v. Oregon Short Line R. Co., 31 M 238, 78 P 303.

In an action against a railroad company for damages sustained by plaintiff in killed and injured cattle because of the company's negligence in failing to see that a private gate, which had been constructed by it in its right of way fence for plaintiff's convenience, was not left open, plaintiff need not allege or prove that defendant knew or should have known that the gate had been left open. Scheffer v. Chicago, M. & P. S. R. Co., 53 M 302, 305, 163 P 565.

Under this section, a railroad company which fails to maintain sufficient cattle guards is not liable for the value of livestock killed or maimed on its right of way unless the complaint alleges and the proof shows that the killing or maiming was done by its engines or cars, and the absence of such an allegation renders the complaint insufficient. Hunt v. White Sulphur Springs & Y. P. R. Co., 63 M 508, 513 et seq., 208 P 917.

Where injury to livestock was not occasioned by reason of the nonexistence of a fence enclosing defendant railway company's tracks, but, as alleged in the complaint, was caused by its employees in driving them away from the tracks into an inclosure where there was no water, the complaint in so far as it relied upon failure to fence did not state a cause

of action under this section. Fabert v. Northern Pacific Ry. Co., 77 M 446, 450, 251 P 546.

#### References

Parrin v. Montana Central Ry. Co., 22 M 290, 56 P 315; Menard v. Montana Central Ry. Co., 22 M 340, 346, 56 P 592; Dewell v. Northern Pacific Ry. Co., 54 M 350, 353, 170 P 753.

# Collateral References

Railroads \$\iiint 103, 104, 405, 406, 411, 412. 74 C.J.S. Railroads \$\sqrt{176}, 182, 547, 558, 575.

44 Am. Jur. 367, Railroads, §§ 152 et seq.

Employment of independent contractor as affecting liability for injury under legal provisions requiring companies to construct and maintain cattle guards. 23 ALR 993.

Snow rendering cattle guard ineffective as affecting liability of company. 26 ALR 679.

Sufficiency as to type of cattle guards at public or private crossings. 75 ALR 936.

72-402. (6541) Liable for injury from negligence. Every railroad corporation or company operating any railroad, or branch thereof, within the limits of this state, which shall negligently injure or kill any horse, mare, gelding, filly, jack, jenny, or mule, or any cow, heifer, bull, ox, steer, or ealf, or any other domestic animal, by running any engine or engines, car or cars, over or against any such animal, shall be liable to the owner of such animal for the damages sustained by such owner by reason thereof. The killing or injury shall be prima-facie evidence of negligence on the part of such corporation or company.

History: Ap. p. Sec. 1, p. 68, L. 1881; re-en. Sec. 713, 5th Div. Comp. Stat. 1887; amd. Sec. 951, Civ. C. 1895; re-en. Sec. 4309, Rev. C. 1907; re-en. Sec. 6541, R. C. M. 1921.

## Evidence

In an action against a railroad company under this section, the testimony of a witness that the section boss showed him where the animal was struck, and stated that after it was struck he killed it to end its sufferings, was not admissible as res gestae. Poindexter & Orr Livestock Co. v. Oregon Short Line R. Co., 33 M 338, 340, 83 P 886. See Callahan v. Chicago, B. & Q. R. Co., 47 M 401, 413, 133 P 687.

In an action against a railroad company to recover for the killing of livestock under this section, proof of an injury to an animal which would inevitably result in its death substantially supports an allegation of killing. Poindexter & Orr Livestock Co. v. Oregon Short Line R. Co., 33 M 338, 342, 83 P 886.

Where the presumption of negligence on the part of a railroad company in the killing of livestock by one of its trains, relied on by plaintiff, is confronted with testimony of its train operatives that there was not any negligence on their part, the result is a conflict of evidence resolvable by the jury, and a directed revidence in favor of defendant was properly refused. Johnson v. Chicago, M. & St. P. R. Co., 52 M 73, 74, 155 P 971.

# Injury to Livestock at Fenced Station Ground

In the absence of willfulness or negligence in handling their trains, railroad companies are not liable for injuring or killing livestock which stray into their depot or station grounds; hence where it was conceded by plaintiff that defendant company's locomotive engineer was not negligent in the handling of the train which killed a horse for which damages were sought, plaintiff was not entitled to recover. Bowers v. Chicago, M. & St. P. R. Co., 61 M 200, 207, 201 P 825.

#### Instruction on This Section

An instruction given in an action for the killing of livestock, to the effect that the law presumed such killing to have been the result of defendant's negligence, correctly stated the law, even though it appeared that while the animal was fatally injured by the locomotive and cars of the defendant, the actual killing was done by one of the defendant's employees to end its sufferings. Poindexter & Orr Livestock Co. v. Oregon Short Line R. Co., 33 M 338, 342, 83 P 886.

#### References

Menard v. Montana Central Ry. Co., 22 M 340, 347, 56 P 592; Scheffer v. Chicago, M. & P. S. R. Co., 53 M 302, 305, 163 P
565; Dewell v. Northern Pacific Ry. Co., 54
M 350, 353, 170 P 753; Knop v. Chicago,
M. & St. P. R. Co., 57 M 288, 187 P 1020.

#### Collateral References

Railroads 405, 443.
74 C.J.S. Railroads §§ 547, 655 et seq.
44 Am. Jur. 826, Railroads, §§ 572 et seq.

Contributory negligence as a defense to a cause of action based upon violation of statute imposing duty on railroad. 10 ALR 2d 853

72-403. (6542) Designation of station where records are kept. be the duty of any corporation, association, company, person, or persons owning, controlling, or operating any railroad, or branch thereof, in this state, to designate some station on the line of the same, in each county through which it passes, at which it shall keep a suitable book, and within thirty days after the killing or injuring of any animal or animals, to cause to be entered therein the date when and the place where the same were killed or injured, as near as may be, together with a description thereof, including the age, color, and sex of the same and marks and brands upon the same as near as the same can be done, which said book shall be kept for the inspection of any person or persons claiming to be interested in the inspection thereof, and shall cause a notice of the station so designated to be filed with the county clerk of the county in which said station is situated; provided, that when such railroad or branch thereof shall run to or through any town or station at which is located the county seat of any county, then such book shall be kept at such town or station at which said county seat is located, and the affidavit hereinafter provided for may be served on the agent of such station.

History: Ap. p. Sec. 3, p. 70, L. 1881; amd. Sec. 720, 5th Div. Comp. Stat. 1887; amd. Sec. 953, Civ. C. 1895; amd. Sec. 2, Ch. 29, L. 1905; re-en. Sec. 4311, Rev. C. 1907; re-en. Sec. 6542, R. C. M. 1921.

# County Seat

Where a railroad line passes through a town at which the county seat is located and the company there keeps the book required by this section, in which to record the description of animals killed or injured and the time and place of the injury, it is under no obligation to cause a notice to be filed with the county clerk designating the station at which it is kept, and its omission to do so does not render it liable in damages under the succeeding section, 72-404. Hunt v. White Sulphur Springs & Y. P. R. Co., 63 M 508, 516 et seq., 208 P 917.

# Failure to Keep Record

Where a railway company fails to keep

the book prescribed by this section, in which to record the dates when and the places where on its track livestock is killed in the operation of its trains, and other like matters for information to the person interested, the district court may, in an action to recover damages, decline to hear its defense and award judgment for plaintiff, the statute not being open to constitutional attack. Foster v. Oregon Short Line R. Co., 62 M 230, 231, 204 P 375.

# Police Regulation

This statute is a general police regulation, analogous to one requiring fencing and cattle guards, and as such valid. Dewell v. Northern Pacific Ry. Co., 54 M 350, 356, 170 P 753.

#### References

Parrin v. Montana Central Ry. Co., 22 M 290, 56 P 315. 72-404. (6543) Penalty for violation of preceding section. Any corporation, association, person, or persons so owning, controlling, or operating such railroad or branch thereof, failing to designate said station, file said notice, keep said book, and make the entries as provided in the preceding section, shall be liable to the owner or owners of the animal or animals so killed or injured, whether negligently done or not, and the court or jury before whom any action is tried for the recovery of damages on account thereof, may, in its or their discretion, render verdict and judgment for the amount of the value of any such animal or animals so killed, or the amount of damages sustained by reason of any injury thereto.

History: En. Sec. 721, 5th Div. Comp. Stat. 1887; re-en. Sec. 954, Civ. C. 1895; re-en. Sec. 4312, Rev. C. 1907; re-en. Sec. 6543, R. C. M. 1921.

# Constitutionality

This section is not unconstitutional as delegating law-making powers to the court or jury. Dewell v. Northern Pacific Ry. Co., 54 M 350, 358, 170 P 753.

# Failure to Keep Record Book

The fact that the owner of cattle killed has actual knowledge of the killing does not prevent him from invoking the provision of this section imposing absolute liability for failure to keep the record book prescribed by section 72-403. Dewell

v. Northern Pacific Ry. Co., 54 M 350, 358, 170 P 753.

# Pleading and Proof

Under this section it is not necessary for the plaintiff to allege or prove negligence on the part of the railroad company. Dewell v. Northern Pacific Ry. Co., 54 M 350, 358, 170 P 753.

#### References

Hunt v. White Sulphur Springs & Y. P. R. Co., 63 M 508, 516 et seq., 208 P 917.

## Collateral References

Railroads \$255, 434.
74 C.J.S. Railroads \$\$ 456, 630.

(6544) Attorney's fee allowed, except when. Whenever any of the livestock referred to in this chapter shall be injured or killed as therein recited, and the owner or owners thereof shall thereafter institute an action for the recovery of the loss or damage so sustained by him, or them, the court in which such action shall be brought shall tax, as a part of the costs therein, a reasonable sum, to be fixed by the court, as a fee to the attorney of the prevailing or successful party for conducting such action, which said fee so fixed and allowed shall be collected in like manner as other costs; provided, that no such fee shall be allowed by the court or collected from the defendant when it shall appear from the pleadings or proof, in any such action, that the defendant prior to the institution of such action, offered or agreed to pay to the plaintiff therein, in settlement of the loss or damages claimed, a sum equal to or in excess of the amount recovered as damages in said action. Or unless the plaintiff, at least forty days prior to the commencement of the action, shall have made demand, in writing, upon the defendant, his agent, or attorney, for the sum of money claimed as indemnity for the killing of said livestock.

History: Ap. p. Sec. 722, 5th Div. Comp. Stat. 1887; amd. Sec. 955, Civ. C. 1895; amd. Sec. 1, Ch. 101, L. 1903; re-en. Sec. 4313, Rev. C. 1907; amd. Sec. 1, Ch. 99, L. 1919; amd. Sec. 1, Ch. 226, L. 1921; re-en. Sec. 6544, R. C. M. 1921.

#### Constitutionality

The provision of this section (sec. 4313, Rev. C. 1907 prior to 1919 amendment)

allowing an owner, in an action brought by him to recover damages for cattle alleged to have been killed by railroad company, to recover also an attorney's fee if he is successful but denying such fee to the railroad company if it is successful, is unconstitutional as denying equal protection of the laws. Dewell v. Northern Pacific Ry. Co., 54 M 350, 353, 170 P 753.

#### Value of Services

In an action against a railroad for the killing of livestock on its track, in which, under this section, an attorney's fee, to be fixed by the court, may be allowed to the successful party, testimony as to the value of the attorney's services is not admissible, the question of its allowance being one for the determination of the court and not of the jury in arriving at the

amount of their verdict. Vaill v. Northern Pacific Ry. Co., 66 M 301, 302, 306, 213 P 446.

#### References

In re Maury, 97 M 316, 325, 34 P 2d 380.

#### Collateral References

Railroads \$ 452. 74 C.J.S. Railroads \$ 688.

72-406. (6545) Company may deposit value of animal. If any corporation, association, company, person, or persons, so owning, controlling, or operating any such railroad or branch thereof, shall kill or injure any animal or animals as aforesaid, and shall tender to the owner or owners thereof, or to his or their agent in that behalf, the amount which they shall deem to be the value thereof, or the damage thereto, as the case may be; or if said railroad, corporation, association, company, person, or persons shall deposit with the board of stock commissioners such amount for the owner or owners thereof; and such owner or owners, or his or their said agent, shall refuse to accept the same in settlement thereof, then such owner or owners shall pay all costs incurred in any action instituted, after such tender or deposit, to recover such value or damage, unless he or they shall recover therein more than the amount so tendered as aforesaid.

History: En. Sec. 723, 5th Div. Comp. re-en. Sec. 4314, Rev. C. 1907; re-en. Sec. Stat. 1887; re-en. Sec. 956, Civ. C. 1895; 6545, R. C. M. 1921.

- 72-407. (6546) Payment of claim for damages to state livestock commission. (1) Where livestock are killed by railroad corporations in violation of section 72-401 in the event the owner of any such livestock shall not claim or assert any claim against such railroad or railroad corporation for the value of the livestock so killed within six months from the date such animal or animals are killed, the secretary of the state livestock commission is hereby authorized, required, and directed to demand and receive from such railroad or railroad corporation payment in damages for such livestock, and the said livestock commission is hereby empowered and directed to institute and prosecute, in the name of the state, actions against such railroad or railroad companies in any court of competent jurisdiction to recover damages in the event of the failure, neglect, or refusal of such railroad or railroad companies to make payment of the amount of the claim filed by the secretary of the state livestock commission, upon demand as herein provided.
- (2) The money so recovered shall be paid over to the secretary of the state livestock commission, and shall be by him placed and held in a separate fund and disposed of as herein provided. Such money shall be held by the secretary of the state livestock commission for a period of two years after the date of its receipt, and in the event that the lawful owner of the animal killed does not present and prove his claim to the net proceeds received from the animal killed, within said time, the same shall be paid over to the state treasurer of the state of Montana, and be by him placed to the credit of the stock estray fund. However, should the owner of the animal killed present and prove his claim within the time herein

provided, the secretary of the state livestock commission is hereby authorized and empowered to pay such claimant the amount of money to which he is entitled for the animal or animals so killed by any railroad or railroad company, the damages for which have been collected by the said state livestock commission or the secretary thereof, as provided in this act.

(3) In all actions prosecuted for the recovery of the value of livestock killed under the provisions of this act, the prevailing or successful party shall recover all costs. In the event the owner of any animal or animals killed has not presented his claim against the railroad or railroad company which caused the same to be killed, any settlement made or obtained by the state livestock commission, or the secretary thereof, shall constitute a bar as against any action by the owner of such animal or animals.

History: En. Sec. 1, Ch. 183, L. 1907; Sec. 4315, Rev. C. 1907; amd. Sec. 2, Ch. 99, L. 1919; re-en. Sec. 6546, R. C. M. 1921.

Collateral References Railroads ≈ 429, 434, 437, 450. 74 C.J.S. Railroads, §§ 557, 630, 634, 686.

72-408. (6547) Penalty for driving animal or animals upon track. If the owner or owners, or his or their duly authorized agent or agents, of any animal or animals heretofore mentioned, shall drive the same upon the track of any such corporation, association, company, person, or persons, with the intention to injure it or them, and such animal or animals shall be killed or injured, such owner or owners shall be liable for all injury or damage occasioned by reason of such act, and shall be punished as provided in section 94-3569.

History: En. Sec. 724, 5th Div. Comp. Stat. 1887; amd. Sec. 957, Civ. C. 1895; re-en. Sec. 4316, Rev. C. 1907; re-en. Sec. 6547, R. C. M. 1921.

Collateral References Animals ≈ 91. 3 C.J.S. Animals §§ 185-187.

72-409. (6548) Carcass and hide of animal. In all cases where any corporation, association, company, person, or persons shall kill, or shall injure any animal to such extent that it is necessary to kill the same, as provided in this chapter, they are hereby required and compelled to skin the same, and shall preserve the whole of said hide, or so much thereof as can be preserved, including the head and ears, and shall be entitled to the carcass and hide thereof, unless the owner or owners thereof shall claim the same, in which event the amount of the value thereof shall be deducted from the amount of damages which would otherwise be due. But, in case such corporation, association, company, person, or persons so entitled thereto, shall take said carcass and hide, they shall skin such animal or animals, as herein provided, and shall deposit the hide thereof at the station designated on their line, such station to be designated by the secretary of the state livestock commission, during the space of sixty (60) days, for the inspection of persons claiming to be interested therein, and in the event no person shall claim any such animal, then before such corporation, association, company, person, or persons shall dispose of such hide, they shall notify the stock inspector of the district within which the animal was killed, who shall inspect such hide for marks and brands, and receive from such stock inspector his authority, in writing, to dispose of such hide; and it shall be the duty of the stock inspector to notify any and all owners of such stock, if known or ascertainable from said inspection, of the death of such animal, and if the owner is unknown, the stock inspector shall notify the secretary of the stock commission of the death of such animal or animals; provided, however, that such corporation, association, company, person, or persons may dispose of the whole of said animal, including the carcass and hide, to any licensed rendering plant or licensed renderer in the state, if the owner or owners shall not claim the same. Upon receiving such animal, the licensed rendering plant or licensed renderer shall skin said animal, and shall preserve the whole of said hide, or so much thereof as can be preserved, including the hide of head and ears, and such hide shall be stored separate and apart from hides received from other sources. Within five (5) days after receipt of such hide, such licensed rendering plant or licensed renderer shall notify the state livestock inspector of possession of such hide. Said state livestock inspector shall make an inspection thereof within ten (10) days after being so notified, and it shall be his duty to, and he shall immediately, notify the owner thereof, if ownership be ascertainable, of the death of such animal. If the owner is unknown, the stock inspector shall notify the secretary of the livestock commission of the death of such animal. If no person shall claim the hide of such animal within thirty (30) days after notice given to the state livestock inspector by such licensed renderer or licensed rendering plant, said state livestock inspector shall give written authorization to such licensed rendering plant or licensed renderer to dispose of such hide. Before making disposition thereof under such written authorization, such licensed rendering plant or licensed renderer shall obtain the consent of the corporation, association, company, person, or persons from which such animal was received.

History: En. Sec. 726, 5th Div. Comp. Stat. 1887; re-en. Sec. 958, Civ. C. 1895; re-en. Sec. 4317, Rev. C. 1907; amd. Sec. 3, Ch. 99, L. 1919; re-en. Sec. 6548, R. C. M. 1921; amd. Sec. 1, Ch. 147, L. 1949.

#### Operation and Effect

In an action against a railroad company to recover for injuries to stock, the admissions of an agent of the company, acting within the scope of his authority and with knowledge of the circumstances, that he had ordered the animal killed and the beef sold for the benefit of the company, and the receipt of the proceeds of such sale by the company, establish a primafacie case of the admission of negligence by the company. McCauley v. Montana Central Ry. Co., 11 M 483, 484, 28 P 729.

# Collateral References

Railroads \$2405. 74 C.J.S. Railroads \$547.

72-410. (6549) Penalty for violation. Any person violating any of the provisions of sections 72-405, 72-407 or 72-409 shall, upon conviction thereof, be punished by a fine of not less than ten dollars nor more than three hundred dollars, or by imprisonment in the county jail for a period of not less than ten days nor more than sixty days, or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 99, L. 1919; amd. Sec. 1, Ch. 49, L. 1921; re-en. Sec. 6549, R. C. M. 1921.

#### Cross-Reference

Penalty for violation when not otherwise provided, sec. 94-35-174.

# Collateral References

Animals 101 et seq.; Railroads 255. 3 C.J.S. Animals § 210; 74 C.J.S. Railroads § 456.

72-411. (6550) Shipment of livestock—notice of injury. Any provision, stipulation, or condition in any shipping contract, bill of lading, or other agreement hereafter made or entered into by or between any common carrier and the owner or shipper of any shipment of livestock, providing that written or verbal notice of loss, injury, or damage thereto, or of claim therefor, shall be made or given to any common carrier, or to any agent or officer of any common carrier, or to any other person, within any period less than four months from the date of the occurrence of any such loss, injury, or damage, shall be void and of no effect,

History: En. Sec. 1, Ch. 138, L. 1909; re-en. Sec. 6550, R. C. M. 1921.

## Collateral References

Carriers €= 218.

13 C.J.S. Carriers § 88 et seq.

Northern Pacific Ry. Co. v. Wall, 241 U S 87, 91, 60 L Ed 905, 36 S Ct 493.

## CHAPTER 5

## REGULATIONS CONCERNING RIGHT OF WAY FENCES AND CATTLE GUARDS

Section 72-501. Right of way to be kept free from grass and combustible material.

72-502. Crossings through fences.

72-503. Width and cattle guard requirements.

72-504. Openings under trestles.
72-505. Law applicable to grazing country only.

Violation of law a misdemeanor—penalty.

72-501. (6551) Right of way to be kept free from grass and combustible material. It shall be the duty of all railroad corporations or railroad companies operating any railroad within this state to keep their railroad track, and either side thereof, for a distance of one hundred feet on each side of the track or roadbed, so far as it passes through any portion of this state, free from dead grass, weeds, or any dangerous or combustible material; and any railroad company or corporation failing to keep its railroad track and each side thereof free as above specified, shall be liable for any damages which may occur from fire emanating from operating such railroad, and a neglect to comply with the provisions of this section in keeping free any railroad track, and either side for a distance equal to the space of ground covered by the grant of the right of way for the railroad corporation or company, shall be prima-facie evidence of negligence on the part of any such railroad corporation or company. But no railroad corporation or company shall be required to keep free as above specified any land not a part of its right of way.

History: Ap. p. Sec. 7, p. 71, L. 1881; re-en. Sec. 719, 5th Div. Comp. Stat. 1887; amd. Sec. 952, Civ. C. 1895; re-en. Sec. 4310, Rev. C. 1907; re-en. Sec. 6551, R. C. M. 1921.

### Definition of Railroad

The term "railroad" as employed in this section, held to refer only to common carriers, i.e., such as transport passengers or freight for hire. Crowley v. Polleys Lumber Co., 92 M 27, 32, 9 P 2d 1068.

#### Does Not Offend Chartered Right

It is as much the duty of a railroad company to keep its right of way free from dead grass, weeds, or any dangerous or combustible material, as it is to use proper means to prevent the emission of sparks of fire, and a statute requiring this to be done does not trench upon the chartered right, under act of Congress, of such a railroad company. Diamond v. Northern Pacific Ry. Co., 6 M 580, 588, 13 P 367. See Bielenberg v. Montana Union Ry. Co., 8 M 271, 278, 20 P 314.

#### Instruction

It is error to instruct the jury that upon failure to comply with the provisions of this section, the company is liable for any damage that may occur from any fire emanating from operating the railroad. Spencer v. Montana Central Ry. Co., 11 M 164, 27 P 681.

## Logging Railroad

This section has no application to a logging railroad used solely in connection with the owner's logging business. Crowley v. Polleys Lumber Co., 92 M 27, 32, 9 P 2d 1068.

## Necessary Showing for Recovery

In an action to recover damages, under this section, for the destruction of property by fire communicated to it through combustible material permitted by a railway company to accumulate on its right of way, a prima-facie case of negligence is established by showing that defendant permitted the accumulation of such material on its right of way; but to enable plaintiff to recover, he must show also that the property was destroyed by fire emanating from the operation of the railroad, and that the combustible material was an agency through which the fire was communicated to the property destroyed. Pure Oil Co. v. Chicago, M. & St. P. R. Co., 56 M 266, 185 P 150.

#### Purpose of Damages

The damages given to individuals by the failure of a railroad company to comply with this section are compensatory only, and hence are not a "penalty otherwise provided for" within the meaning of section 94-35-252. Cooper v. Northern Pacific Ry. Co., 212 Fed 533, 535.

## Rebuttal of Presumption

A prima-facie case of negligence established by plaintiff in an action brought under this section may be overcome by evidence that the railway company exercised reasonable care to keep its right of way free from combustible material. Pure Oil Co. v. Chicago, M. & St. P. R. Co., 56 M 266, 185 P 150.

## Who May Complain

This section is for the benefit of all going on the right of way for the purposes of, or incidental to, transportation, and of all off the right of way who may be injured by the railroad's failure to perform the duty imposed, but does not extend to trespassers or tenants on the right of way who take the same as they find it, or subject to the terms of their occupancy. Cooper v. Northern Pacific Ry. Co., 212 Fed 533, 536.

Lease construed as exempting railway company from liability for loss occasioned by fire incident to or arising from railway operation, but not exempting it for loss arising from fire due to the railway company's violation of this section. Cooper v. Northern Pacific Ry. Co., 212 Fed 533, 536.

#### Collateral References

Railroads \$456. 74 C.J.S. Railroads \$494.

72-502. (6552) Crossings through fences. Any railroad corporation or lessee, person, company, or corporation operating any railroad in this state, which may hereafter fence its right of way, shall make crossings through its fence and over its roadbed along its right of way, every four miles thereof, or as near thereat as may be practicable.

History: En. Sec. 1, p. 148, L. 1893; re-en. Sec. 959, Civ. C. 1895; re-en. Sec. 4318, Rev. C. 1907; re-en. Sec. 6552, R. C. M. 1921.

Collateral References
Railroads = 102.

74 C.J.S. Railroads § 168.

72-503. (6553) Width and cattle guard requirements. Such openings shall not be less than sixty feet in width. The said railroad company or lessee, person, company, or corporation operating any railroad shall place cattle guards on either side of the said openings, sufficient to prevent any cattle from entering upon the said right of way inclosed.

History: En. Sec. 2, p. 148, L. 1893; 4319, Rev. C. 1907; re-en. Sec. 6553, R. re-en. Sec. 960, Civ. C. 1895; re-en. Sec. C. M. 1921.

72-504. (6554) Openings under trestles. The said railroad company, lessee, person, or company operating any railroad in addition to the said

openings, shall leave unfenced any places where the said railroad runs over trestles that are sufficiently high for cattle to go underneath the same.

History: En. Sec. 3, p. 148, L. 1893; re-en. Sec. 961, Civ. C. 1895; re-en. Sec. 4320, Rev. C. 1907; re-en. Sec. 6554, R. C. M. 1921.

#### Collateral References

Railroads \$\infty 86, 102, 103, 108. 74 C.J.S. Railroads §§ 128, 168, 185 et sea.

(6555) Law applicable to grazing country only. The provisions of this act shall only apply to grazing country.

History: En. Sec. 4, p. 148, L. 1893; re-en. Sec. 962, Civ. C. 1895; re-en. Sec. 4321, Rev. C. 1907; re-en. Sec. 6555, R. C. M. 1921.

72-506. (6556) Violation of law a misdemeanor—penalty. Any railroad corporation or lessee, person, company, or corporation operating any railroad in this state, violating the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be fined in a sum not less than one hundred dollars, and not more than five hundred dollars.

History: En. Sec. 5, p. 148, L. 1893; re-en. Sec. 963, Civ. C. 1895; re-en. Sec. 4322, Rev. C. 1907; re-en. Sec. 6556, R. C. M. 1921.

Penalty for violations when not otherwise provided, sec. 94-35-174.

## Cross-References

Liability for stock killed or injured for lack of cattle guard, sec. 72-401.

## Collateral References

Railroads \$\infty 83, 86, 102(12), 104(2). 74 C.J.S. Railroads §§ 121, 128, 168.

## CHAPTER 6

## GENERAL REGULATION OF BUSINESS OF RAILROADS

Section 72-601. Baggage checks. 72-602. Duties of corporation. 72-603. Corporation to pay damage for refusal. 72-604. Accommodations for and care to be taken of passengers. 72-605. Printed regulations to be posted. 72-606. 72-607. Expulsion of passengers refusing to pay fare. Officers to wear badges. 72-608. Passenger tickets—how issued. 72-609. Ticket agent to be given certificate. 72-610. Unlawful sale of tickets. 72-611. 72-612. Violation of law a misdemeanor—penalty. Certificate to be exhibited. 72-613. Redemption of unused tickets. 72-614. Penalty for failure to redeem ticket. 72-615. Discrimination in charges forbidden.

72-616. Reduced or free transportation by carriers.

72-617. Persons to whom free transportation may be issued.

72-618. Additional free transportation authorized.

72-619. Penalty for violation of law.

Persons or property may be transported free or at reduced rates in 72-620. certain cases.

72-621. Classification shall be held reasonable, etc.

72-622. Size and equipment of caboose.

72-623. Violation of law a misdemeanor—penalty.

72-624. Telephones must be maintained in offices of railroad, telegraph and express companies.

"Business hours" defined. 72-625.

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        Bulletin boards must be installed in stations.
72-630.
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         Party injured to share fine.
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        Assumption of risk.
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         Exemption from liability by contract, etc.
         Headlights for locomotives.
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72-653. Penalty for not using.
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         Duty of railroad commission to enforce law.
         Locomotive and electric motors to be equipped with numbers.
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        Compensation of railroad employees on removal of division point.
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72-668.
         Track motor cars-windshield-wipers-canopy on top.
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72-669.
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72-601. (6557) Baggage checks. A check must be affixed to every package or parcel of baggage when taken for transportation by any agent or employee of such railroad corporation, and a duplicate thereof given to the passenger or person delivering the same in his behalf; and if such check is refused on demand, the railroad corporation must pay to such passenger the sum of twenty dollars, to be recovered in an action for damages; and no fare or toll must be collected or received from such passenger, and if such passenger has paid his fare, the same must be returned by the conductor in charge of the train; and on producing the check, if his baggage is not delivered to him by the agent or employee of the railroad corporation, he may recover the value thereof from the corporation.

History: En. Sec. 970, Civ. C. 1895; reen. Sec. 4323, Rev. C. 1907; re-en. Sec. 6557, R. C. M. 1921. Cal. Civ. C. Sec. 479.

sions of this section would authorize the recovery of the actual value of the baggage lost. Rose v. Northern Pacific Ry. Co., 35 M 70, 78, 88 P 767.

## Operation and Effect

In the absence of a special contract limiting the carrier's liability, the provi-

Collateral References
Carriers 21, 46½, 91.

13 C.J.S. Carriers §§ 48, 123, 160, 181, 182.

10 Am. Jur. 434, Carriers, §§ 1706 et seq.

Carrier's liability in respect to baggage checked in parcel room. 7 ALR 1234; 27 ALR 157 and 37 ALR 762.

Liability of carrier for baggage not accompanied by passenger. 23 ALR 1446. Liability of carrier for baggage when

not accompanied by passenger, where passenger is using a commutation or mileage ticket. 23 ALR 1456.

Tort liability of carrier for theft by servant. 15 ALR 2d 842.

72-602. (6558) Duties of corporation. Every such corporation must start and run its cars, for the transportation of persons and property, at such regular times as it shall fix by public notice, and must furnish sufficient accommodations for the transportation of all such passengers and property as, within a reasonable time previous thereto, offer or are offered for transportation, at the place of starting, at the junction of other railroads, and at sidings or stopping places established for receiving and discharging way passengers and freight; and must take, transport, and discharge such passengers and property at, from, and to such places, on the due payment of tolls, freight, or fare therefor.

History: En. Sec. 971, Civ. C. 1895; re-en. Sec. 4324, Rev. C. 1907; re-en. Sec. 6558, R. C. M. 1921. Cal. Civ. C. Sec. 481.

#### Cross-References

Dynamiting or injuring trains, secs. 94-3205 to 94-3207.

Holding up trains, penalty, sec. 94-3205. Interference with locomotives, secs. 94-3205 to 94-3208.

Stealing rides on trains, penalty, sec. 94-35-201.

#### Collateral References

Carriers 13, 236; Railroads 223, 228. 13 C.J.S. Carriers §§ 348 et seq., 538 et seq.; 74 C.J.S. Railroads § 394.

10 Am. Jur. 59, Carriers, §§ 1017 et seq.

72-603. (6559) Corporation to pay damage for refusal. In case of refusal by such corporation or its agents so to take and transport any passengers or property, or to deliver the same, at the regular appointed places, such corporation must pay to the party aggrieved all damages which are sustained thereby, with costs of suit.

History: En. Sec. 972, Civ. C. 1895; re-en. Sec. 4325, Rev. C. 1907; re-en. Sec. 6559, R. C. M. 1921. Cal. Civ. C. Sec. 482.

## Cross-Reference

Refusal to receive passenger, penalty, sec. 94-35-104.

## Operation and Effect

This section merely declares just what

the rule of law applicable in an ordinary negligence action would be in the absence of the statute. Burles v. Oregon Short Line R. Co., 49 M 129, 131, 140 P 513.

#### Collateral References

Carriers 91; Railroads 253. 13 C.J.S. Carriers § 91 et seq.; 74 C.J.S. Railroads §§ 447, 453. 10 Am. Jur. 68, Carriers, § 1033.

(6560) Accommodations for and care to be taken of passengers. Every railroad corporation must furnish, on the inside of its passenger cars, sufficient room and accommodations for all passengers to whom tickets are sold for any one trip, and for all persons presenting tickets entitling them to travel thereon; and when fare is taken for transporting passengers on any baggage, wood, gravel, or freight car, the same care must be taken and the same responsibility is assumed by the corporation as for passengers on passenger cars.

History: En. Sec. 973, Civ. C. 1895; re-en. Sec. 4326, Rev. C. 1907; re-en. Sec. 6560, R. C. M. 1921. Cal. Civ. C. Sec. 483.

## Cross-Reference

Conductor, power to arrest for disturbance, sec. 94-3564.

#### Collateral References

Railroads \$\sim 226.

74 C.J.S. Railroads § 453.

10 Am. Jur. 81, Carriers, §§ 1064 et seq.

Liability of carrier for injury to passenger by articles belonging to carrier on the floor or in the aisles. 12 ALR 1366.

Liability of carrier for injury to passenger due to obstruction of aisle by property of another passenger. 19 ALR 1372.

Personal liability of servant or agent of carrier for injury to passenger. 20 ALR 97 and 99 ALR 408.

Injury to passenger by door of car. 25 ALR 1061 and 41 ALR 1089.

Injuries to passenger by car window. 29 ALR 1262 and 45 ALR 1541.

Carrier's liability for injury to passen-

ger due to rushing or crowding of passenger. 32 ALR 1315 and 155 ALR 634.

Liability of carrier for injury from falling articles of freight. 40 ALR 501.

Liability for personal injury to person in Pullman car. 41 ALR 1397.

Liability of carrier for injuries to or death of passenger from accident due to physical condition of employee. 120 ALR 931.

Liability for injury to patron from defect or fall in seat. 21 ALR 2d 464.

Racial segregation by common carriers. 38 ALR 2d 1190.

Carrier's liability to passenger injured while using washroom or lavatory. 50 ALR 2d 1071.

Liability of carrier to passenger injured through fall of baggage or other object from overhead repository. 68 ALR 2d 667.

72-605. (6561) Printed regulations to be posted. Every railroad corporation must have printed and conspicuously posted on the inside of its passenger cars its rules and regulations regarding fare and conduct of its passengers; and in case any passenger is injured on or from the platform of a car, or on any baggage, wood, gravel, or freight car, in violation of such printed regulations, or in violation of positive verbal instructions or injunctions given to such passenger in person by any officer of the train, the corporation is not responsible for damages for such injuries, unless the corporation failed to comply with the provisions of the preceding section.

History: En. Sec. 974, Civ. C. 1895; re-en. Sec. 4327, Rev. C. 1907; re-en. Sec. 6561, R. C. M. 1921. Cal. Civ. C. Sec. 484.

## Collateral References

Carriers 248, 267, 335; Railroads 223 et seq.

13 C.J.S. Carriers §§ 561, 573, 779; 74 C.J.S. Railroads § 419.

72-606. (6562) Expulsion of passengers refusing to pay fare. If any passenger refuses to pay his fare, or to exhibit or surrender his ticket, when reasonably requested so to do, the conductor and employees of the corporation may put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place, or near any dwelling house, on stopping the train.

History: En. Sec. 975, Civ. C. 1895; re-en. Sec. 4328, Rev. C. 1907; re-en. Sec. 6562, R. C. M. 1921. Cal. Civ. C. Sec. 487.

## Collateral References

Carriers 355.

13 C.J.S. Carriers § 779.

#### Cross-Reference

Use of force in expelling passengers not unlawful, sec. 94-605.

72-607. (6563) Officers to wear badges. Every conductor, baggage master, engineer, brakeman, or other employee of any railroad corporation, employed on a passenger train or at stations for passengers, must wear upon his hat or cap, or in some conspicuous place on the breast of his coat, a badge indicating his office or station, and the initial letters of the name of the corporation by which he is employed. No collector or conductor, without such badge, is authorized to demand or to receive from any passenger any fare, toll, or ticket, or exercise any of the powers of his office or station;

and no other officer or employee, without such badge, has any authority to meddle or interfere with any passenger or property.

History: En. Sec. 976, Civ. C. 1895; re-en. Sec. 4329, Rev. C. 1907; re-en. Sec. 6563, R. C. M. 1921. Cal. Civ. C. Sec. 488.

#### Cross-References

Conductor, violation of duty, sec. 94-35-251.

Hours of labor, sec. 41-1123.

Intoxication of employees, penalty, sec. 94-35-109.

## Collateral References

Carriers \$251; Railroads 230 et seq. 13 C.J.S. Carriers \$602; 74 C.J.S. Railroads \$400.

72-608. (6564) Passenger tickets—how issued. Every railroad corporation must provide, and on being tendered the regular rates of fare, furnish to every person desiring a passage on its passenger cars, a ticket, which entitles the purchaser to a ride, and to the accommodations provided on their cars, from the depot or station where the same is purchased to any other depot or station on the line of its road. Every such ticket entitles the holder thereof to ride on its passenger cars to the station or depot of destination, or any intermediate station, and from any intermediate station to the depot of destination designated in the ticket, at any time within six months thereafter. Any corporation failing so to provide and furnish tickets, or refusing the passage which the same calls for when sold, must pay to the person so refused the sum of two hundred dollars.

History: En. Sec. 977, Civ. C. 1895; re-en. Sec. 4330, Rev. C. 1907; re-en. Sec. 6564, R. C. M. 1921. Cal. Civ. C. Sec. 490.

## Cross-References

Counterfeiting railroad tickets, penalty, sec. 94-2012.

Larceny of passenger ticket, determination of value, sec. 94-2711.

## Reduction of Fare

In the absence of statutory prohibition, a railway company may sell, for a reduced fare, a particular form of ticket, whereby its liability is restricted and its obligations curtailed. Miley v. Northern Pacific Ry. Co., 41 M 51, 55, 108 P 5.

One who purchased a railroad ticket at a reduced rate to a certain station on defendant's line, and boarded a train which did not stop at the point to which his ticket called for transportation, having failed to pay the regular fare, was not one of the class of persons for whose benefit this section was enacted, and therefore could not maintain an action for the penalty therein provided. Miley v. Northern Pacific Ry. Co., 41 M 51, 55, 108 P 5.

## Collateral References

Carriers \$\iiins 20(2), 249-255.

13 C.J.S. Carriers \$\\$ 569, 658.

10 Am. Jur. 123, Carriers, \\$ 1157.

72-609. (6565) Ticket agent to be given certificate. It shall be the duty of the owners of any railroad or steamboat for the transportation of passengers, to provide each agent who may be authorized to sell within the state tickets or other evidence entitling the holder thereof to travel upon his or their railroad or steamboat, with a certificate setting forth the authority of such agent to make such sales, which certificate shall be duly attested by the corporate seal of any corporate owner of such railroad or steamboat, and shall, for the information of travelers, be kept posted in [a] conspicuous place in the office of such agent.

History: En. Sec. 1, p. 150, L. 1893; re-en. Sec. 978, Civ. C. 1895; re-en. Sec. 4331, Rev. C. 1907; re-en. Sec. 6565, R. C. M. 1921; amd. Sec. 1, Ch. 5, L. 1943; amd. Sec. 1, Ch. 60, L. 1949.

## Compiler's Note

The bracketed word "a" was inserted by the compiler.

## Collateral References

Carriers 8, 252; Shipping 163.
13 C.J.S. Carriers §§ 20, 598, 600, 650;
80 C.J.S. Shipping § 182.

#### DECISIONS UNDER FORMER LAW

Constitutionality

revenue purposes. State v. Bernheim, 19 M 512, 515, 49 P 441. This section is constitutional; is in the

nature of a police regulation, and not for

72-610. (6566) Unlawful sale of tickets. It shall be unlawful for any person not a duly authorized ticket agent, and in possession of such certificate, so posted as aforesaid, to sell, barter, or transfer within this state, for any consideration, the whole or any part of any ticket or other evidence of the holder's title or right to travel on said railroad or steamboat, whether such railroad or steamboat be situated, operated, or owned within or without the limits of this state.

History: En. Sec. 2, p. 150, L. 1893; 4332, Rev. C. 1907; re-en. Sec. 6566, R. C. M. 1921; amd. Sec. 2, Ch. 60, L. 1949. re-en. Sec. 979, Civ. C. 1895; re-en. Sec.

(6567) Violation of law a misdemeanor—penalty. Whoever shall violate the provisions of the preceding section shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, and by imprisonment not exceeding one year, or either or both, in the discretion of the court in which such offender shall be convicted.

History: En. Sec. 3, p. 151, L. 1893; re-en. Sec. 980, Civ. C. 1895; re-en. Sec. 4333, Rev. C. 1907; re-en. Sec. 6567, R. C. M. 1921.

Collateral References

Carriers 252; Shipping 169. 13 C.J.S. Carriers §§ 598-600, 652; 80 C.J.S. Shipping § 181.

(6568) Certificate to be exhibited. It shall be the duty of every agent residing or acting within this state, who shall be authorized to sell therein tickets or other evidence of the holder's title to travel upon any railroad or steamboat, to exhibit to any person desiring to purchase a ticket, or to any officer of the law who may request him so to do, such certificate of his authority thus to sell.

History: En. Sec. 4, p. 151, L. 1893; 4334, Rev. C. 1907; re-en. Sec. 6568, R. C. re-en. Sec. 981, Civ. C. 1895; re-en. Sec. M. 1921; amd. Sec. 3, Ch. 60, L. 1949.

72-613. (6569) Redemption of unused tickets. It shall be the duty of the owners of every railroad or steamboat situate or operated, in whole or in part, within this state, to provide for the redemption, under reasonable precautions, of the whole, or of any coupon or coupons of any ticket theretofore sold by any agent authorized as aforesaid, which the purchaser, for any reason other than the expiration of the time limited in said ticket for the use thereof, has not used, at cost, in case of the ticket not used, and in case of a coupon of a ticket partially used, at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket between the points for which the used portion of said ticket was actually used; provided, that such ticket, or coupon, or coupons, shall be presented for such redemption to any agent authorized as aforesaid before the time therein limited for the use thereof shall have expired; and the deposit of such ticket, or part of ticket in the post office, addressed to any such agent, with postage thereon duly prepaid, before the expiration of the time limited on such ticket or part of ticket, shall be deemed such presentation; and the sale by any person of such ticket,

or of the unused portion of any such ticket or coupon, or coupons, otherwise than by the presentation of the same for redemption, as hereinbefore provided, shall be deemed to be a violation of the provisions of this act, and any person guilty of such violation shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or either or both, in the discretion of the court in which such offender shall be convicted; provided, however, that when any ticket selling agent so licensed as aforesaid, or any common carrier subject to the provisions of this act, shall sell, barter, or transfer to any person any mileage book or commutation tickets or excursion ticket at any reduced rate authorized by law, and when such mileage book, commutation ticket, or excursion ticket shall, by the terms thereof, be limited in respect of the time in which the same shall be used. then, and in that case, such mileage book, commutation ticket, or excursion ticket shall not be redeemed by said common carrier subject to the provisions of this act.

History: En. Sec. 5, p. 152, L. 1893; re-en. Sec. 982, Civ. C. 1895; re-en. Sec. 4335, Rev. C. 1907; re-en. Sec. 6569, R. C. M. 1921.

#### Collateral References

Carriers 261; Shipping 169.
13 C.J.S. Carriers §§ 586, 614; 80 C.J.S. Shipping § 181.

72-614. (6570) Penalty for failure to redeem ticket. Any railroad company or steamboat company which shall, by any of its authorized ticket-selling agents within this state, unreasonably refuse to redeem any coupon of a ticket, or any ticket as required by the preceding section, shall pay to the state of Montana a fine not exceeding five hundred dollars for each offense.

History: En. Sec. 6, p. 152, L. 1893; 4336, Rev. C. 1907; re-en. Sec. 6570, R. C. re-en. Sec. 983, Civ. C. 1895; re-en. Sec. M. 1921.

72-615. (6571) Discrimination in charges forbidden. It is hereby declared to be unlawful for any ticket-selling agent so authorized and licensed as aforesaid, or for any common carrier subject to the provisions of this act, to charge, demand, collect, or receive from, to sell, barter, transfer, or assign to, any person or persons, firm, company, corporation, or association, any ticket or tickets of any class whatever entitling the purchaser or holder thereof to transportation by the common carrier issuing such ticket or tickets, for a greater or less sum or price than is charged, demanded, collected, or received by such ticket-selling agent or common carrier subject to the provisions of this act, for a similar ticket or tickets of the same class. Any person, ticket-selling agent, or common carrier subject to the provisions of this act, who shall violate the provisions of this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in the sum not exceeding one thousand dollars for each offense.

History: En. Sec. 7, p. 153, L. 1893; re-en. Sec. 984, Civ. C. 1895; re-en. Sec. 4337, Rev. C. 1907; re-en. Sec. 6571, R. C. M. 1921.

NOTE.—This section held impliedly repealed by section 72-127 (3805) allowing railroads to charge a less amount than the regular passenger tariff rate in cer-

tain cases. Opinions of Attorney General, Vol. 3, p. 101.

## Construction

As a statute may be remedial in part and penal in part for purposes of construction, the penalty clause of this section should be construed according to the fair import of its terms, with a view to effectuating its object, as required by section 94-101, but the part prohibiting unjust discrimination in charging for transportation should be liberally construed with a view to carrying out the legislative intention. John v. Northern Pacific Ry. Co., 42 M 18, 43, 111 P 632.

#### Purpose

The purpose of this section was not only to benefit the railroad companies by driving the ticket brokers out of business, but to provide against loss to the purchaser of an unused ticket by requiring that it should be redeemed by the seller; and so it was enacted that the railroad companies should themselves be prohibited from indulging in kindred practices, by pernicious crimination between persons of the same class. John v. Northern Pacific Ry. Co., 42 M 18, 38, 111 P 632.

#### References

State v. Bernheim, 19 M 512, 513, 49 P 441.

### Collateral References

10 Am. Jur. 126, Carriers, §§ 1165-1168.

72-616. (6572) Reduced or free transportation by carriers. No common carrier of passengers shall directly or indirectly issue, furnish, or give any free ticket, free pass, or free transportation for the carriage or passage of any person within this state, except as permitted in the next section. Nor shall any common carrier, in the sale of tickets for transportation at reduced rates, discriminate between persons purchasing the same, except the persons described in the next section. The words "free ticket," "free pass," "free transportation," as used in this act, shall include any ticket, pass, contract, permit, or transportation issued, furnished, or given to any person by any common carrier of passengers for carriage or passage, for any other consideration than money paid in the usual way at the rate, fare, or charge open to all who desire to purchase.

History: En. Sec. 1, Ch. 136, L. 1911; re-en. Sec. 6572, R. C. M. 1921.

## Cross-Reference

Rates for military men, sec. 77-404.

### Collateral References

Carriers 12, 13, 249, 257.
13 C.J.S. Carriers §§ 275 et seq., 384 et seq., 581, 586.

(6573) Persons to whom free transportation may be issued. The persons to whom free tickets, free passes, free transportation, and discriminating reduced rates may be issued, furnished, or given are the following, to wit: (a) The officers, agents, employees, attorneys, physicians, and surgeons of such common carriers of passengers; (b) to the families of the persons included in subdivision "a" hereof; (c) the general officers of any such common carriers; (d) employees of sleeping car and express car companies, and linemen of telegraph and telephone companies, railway mail service employees, post-office inspectors, customs inspectors, and immigration inspectors, newsboys on trains, baggage agents; (e) persons injured in wrecks, and physicians and nurses attending such persons; (f) passengers traveling with the object of providing relief in cases of railroad accident, general epidemic, pestilence, or other calamitous visitation; (g) necessary caretakers of livestock, vegetables, and fruit, including return transportation to forwarding stations; (h) the officers, agents, or regularly accredited representatives of labor organizations composed wholly of employees of railway companies; (i) inmates of homes for the reform or rescue of the vicious or unfortunate, including those about to enter and those returning home after discharge, and boards of managers, including officers and superintendents of such homes; (j) superannuated and pensioned employees,

and members of their families and widows of such members; (k) employees, crippled and disabled in the service of the common carrier of passengers; (l) policemen and firemen of any city, wearing the insignia of their office within the limits of such city; (m) ministers of religion, newspaper employees in exchange for advertising, traveling secretaries of Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; (n) indigent, destitute and homeless persons, while being transported by charitable societies or hospitals, and necessary agents, employees in such transportation; (o) school children to and from public or parochial schools; (p) the railroad commission of Montana; (q) the state fire marshal; (r) the state scale expert, and their necessary employees, while traveling on official duty.

The provisions of this act shall not be construed to prohibit the interchange of passes for the persons to whom free tickets, free passes, or free transportation may be furnished or given under the provisions of this section. Nothing in this act shall be construed to invalidate any existing contract between a street railway company and a city, where a condition of a franchise grant requires the furnishing of transportation to policemen, firemen, and officers while in the performance of official duties. All acts and parts of acts in conflict herewith are hereby repealed, provided, however, that this act shall not be construed to modify or repeal the provisions of section 72-618.

History: En. Sec. 2, Ch. 136, L. 1911; re-en. Sec. 6573, R. C. M. 1921; amd. Sec. 1, Ch. 113, L. 1929; amd. Sec. 1, Ch. 78, L. 1933.

Collateral References
Carriers ≈ 253½.
13 C.J.S. Carriers § 622 et seq.
9 Am. Jur. 578, Carriers, §§ 237-240.

(6573.1) Additional free transportation authorized. That common carriers of passengers in this state authorized by section 72-617, to issue free transportation to certain classes of persons may also issue free transportation to their furloughed employees and members of their families. to persons who have become disabled or infirm in the service of a common carrier, to members of families of persons who have become disabled or infirm in the service of any such common carrier, to families of persons killed, and widows during widowhood and minor children during minority, of persons who died while in the service of any such common carrier, to witnesses attending any legal investigation in which such carrier is interested, for the remains of persons who died while in the employment of a common carrier, and to ex-employees traveling for the purpose of entering the service of any such common carrier; provided that the provisions hereof shall not be construed to prohibit or make unlawful the interchange of passes for the persons to whom free transportation may be furnished under this section.

History: En. Sec. 1, Ch. 9, L. 1929.

72-619. (6574) Penalty for violation of law. Any common carrier, its officers or agents or representatives, violating any of the provisions of this act, shall be fined in the sum of not less than ten dollars nor more than three hundred dollars for each offense, and any person, other than the persons

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excepted in the preceding section, who accepts or uses any free ticket, free pass, or free transportation for carriage or passage within this state, shall be subject to a like penalty.

History: En. Sec. 3, Ch. 136, L. 1911; re-en. Sec. 6574, R. C. M. 1921.

72-620. (6575) Persons or property may be transported free or at reduced rates in certain cases. No provisions of the laws of the state of Montana shall be construed to prevent, or shall prevent any person, association, company, or corporation engaged as a common carrier of persons or property in the state of Montana, from carrying, storing, or handling property free, or at reduced rates, for the United States, state, or municipal governments, or for charitable institutions, or property which is being transported to or from fairs and expositions for exhibit thereat, or cars used by the government of the United States or state of Montana for the transportation of fish, for carrying free or at reduced rates agents and employees employed in such transportation, and nothing therein contained shall prevent such person, association, company, or corporation from issuing free transportation, or selling tickets at reduced rates, to the following classes of persons:

Employees of the issuing road, and the members of their families.

Officers and employees of other railroads, and the members of their families upon the exchange of passes or tickets.

Doctors, nurses, and helpers being carried to wrecks.

Soldiers or sailors going to or coming from institutions for their keeping.

Ministers of religion and persons engaged in charitable or religious work, and destitute or homeless persons being transported by charitable societies, or at public expense.

Executive, judicial, or legislative officers of the state of Montana, including the state game warden and his deputies, the members of the state board of horticulture, members of the faculty of the different educational institutions of the state, officers, trustees, or employees of the state fair, officers and inspectors of the livestock and sheep commission boards; provided, however, that when free transportation, or a ticket at a reduced rate, shall be issued to any such officer, state game warden, or deputy, or any member of the said board of horticulture, or any president or member of the faculty of any educational institution, that the same shall only be issued upon the application of the secretary of state, and the said transportation, or ticket, shall be delivered to the secretary of state for delivery to the person or persons applying therefor, and the secretary of state shall keep record of all transportation and tickets at reduced rates so received and delivered by him; provided further, that such state officer, state game warden, and deputies, and members of the state board of horticulture, and the president and faculty of the state educational institutions when traveling upon any free transportation, shall not be entitled to charge any mileage against the state, or if traveling upon a ticket sold at reduced fare, they shall not be entitled to charge mileage in excess of the cost of said ticket.

History: En. Sec. 1, Ch. 53, L. 1913; re-en. Sec. 6575, R. C. M. 1921.

72-621. (6576) Classification shall be held reasonable, etc. The carrying free, or at reduced rates, of property or persons in any of the classes above specified, shall be held to be a reasonable classification by railroad companies for such purposes, and not to be unjust discrimination, and the carriage and transportation by any railroad company, at free or reduced rates, in any of the cases above specified, shall be held not to be a violation of any of the provisions of the laws of Montana, or subject said railroad company to any penalty therefor.

History: En. Sec. 2, Ch. 53, L. 1913; re-en. Sec. 6576, R. C. M. 1921.

72-622. (6577) Size and equipment of caboose. It shall be unlawful for any person, corporation, or company operating any railroad or railway in this state, to require or permit the use of any caboose cars, unless said caboose cars shall be at least twenty-four feet in length, exclusive of platforms, and shall be provided with a door in each end thereof, and with suitable water closets, cupolas, platforms, guard rails, grabirons, and steps for the safety of persons in alighting or getting on said caboose cars, and said caboose cars shall be equipped with at least two four-wheel trucks.

History: En. Sec. 1, Ch. 54, L. 1907; Sec. 4338, Rev. C. 1907; re-en. Sec. 6577, R. C. M. 1921. Collateral References

Carriers 264; Railroads 229. 13 C.J.S. Carriers §§ 36, 61, 64; 74 C.J.S. Railroads § 424.

72-623. (6578) Violation of law a misdemeanor—penalty. Any person, corporation, or company operating any railroad or railway in this state, violating any of the provisions of the preceding section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars, nor more than one thousand dollars for each offense.

History: En. Sec. 2, Ch. 54, L. 1907; Sec. 4339, Rev. C. 1907; re-en. Sec. 6578, R. C. M. 1921. Collateral References
Railroads©=255(2, 3).
74 C.J.S. Railroads § 456.

72-624. (6579) Telephones must be maintained in offices of railroad, telegraph and express companies. It is hereby made the duty of every railroad, telegraph, and express company, doing business in the state of Montana, to install or allow to be installed in its ticket office, public office, and freight office, in all cities and towns in this state, where there are, at the time, one or more public telephone exchanges, a telephone of each public telephone exchange in said city or town, and to maintain in each of said offices direct telephone connection with each of such exchanges; but nothing herein contained shall be construed to require said railroads, telegraph, or express company to build a telephone line, it being intended to require such company or companies to install, or allow to be installed, a telephone in each of its offices where it can be obtained by them as they may be

obtained for other business offices in the same vicinity; each railroad, telegraph, and express company shall cause to be promptly answered all calls made over such telephone connection during business hours; provided, however, that such railroad, telegraph, and express companies shall not, in the absence of an agreement to the effect, be required to bear the expense incident to the installation of said telephones, or to any charges for the use thereof. Over such telephone connection, such railroad, telegraph, or express company shall cause prompt and correct replies to be made to all reasonable and proper inquiries over such connection during business hours, concerning the passenger, freight, or telegraph service of such railroad, telegraph, or express company.

History: En. Sec. 1, Ch. 182, L. 1907; Sec. 4340, Rev. C. 1907; re-en. Sec. 6579, R. C. M. 1921.

## Collateral References

Railroads 225, 226; Telegraphs and Telephones 28.
74 C.J.S. Railroads § 408.

72-625. (6580) "Business hours" defined. The term "business hours," as used in this act, shall be construed to mean such times as the office or depot of such railroad, telegraph, or express company may be open, with an officer or agent of such railroad, telegraph, or express company in charge for the transacting of business.

History: En. Sec. 2, Ch. 182, L. 1907; Sec. 4341, Rev. C. 1907; re-en. Sec. 6580, R. C. M. 1921.

72-626. (6581) Violation of law a misdemeanor. Any railroad, telegraph, or express company, failing or refusing to comply with the provisions of this act after its passage and approval by the governor, shall be deemed guilty of a misdemeanor.

History: En. Sec. 3, Ch. 182, L. 1907; Sec. 4342, Rev. C. 1907; re-en. Sec. 6581, R. C. M. 1921.

### Collateral References

Railroads 255(1, 2) et seq.; Telegraphs and Telephones 79.
74 C.J.S. Railroads § 456.

72-627. (6582) Duty to furnish shipping facilities. It is hereby made the duty of every person, corporation, and association operating a railroad in the state of Montana to maintain facilities for shipment and delivery of freight, and to ship and deliver freight and accommodate passengers at any point upon the line of such railway where there is a platted townsite of record having not less than one hundred inhabitants.

History: En. Sec. 1, Ch. 26, L. 1905; re-en. Sec. 4343, Rev. C. 1907; re-en. Sec. 6582, R. C. M. 1921. Collateral References
Railroads©=225, 226.
74 C.J.S. Railroads § 403.

72-628. (6583) Penalty. Any person, corporation, or association which shall, for sixty days after written request of not less than fifty inhabitants of such platted townsite, fail to comply with the provisions of this act, shall, upon conviction, be fined not less than ten dollars nor more than one hundred dollars for each day thereafter, so long as the provisions of this act are not complied with.

History: En. Sec. 2, Ch. 26, L. 1905; re-en. Sec. 4344, Rev. C. 1907; re-en. Sec. 6583, R. C. M. 1921. Collateral References
Railroads \$\infty 254(2)\$.
74 C.J.S. Railroads \ 444.

(6584) Bulletin boards must be installed in stations. Every company or corporation managing, operating, or leasing any railroad in this state, that is now or may hereafter be engaged in the transportation of passengers, shall place or cause to be placed in a conspicuous place in and about each and every station or depot where an agent, telephone, or telegraph operator is kept, a bulletin board, and such railway company or corporation shall, for the information of the traveling public, at least three hours before the advertised scheduled time of the arrival of each passenger train stopping upon such route at such station, cause to be posted upon such bulletin board the number of the train, the time such train is due, and the fact whether such train is on scheduled time or not, and, if late, how much, and shall indicate at the end of two hours thereafter any gain or loss of more than fifteen minutes made by such train, and thereafter every thirty minutes any gain or loss of more than fifteen minutes made by such train, on such bulletin board at such station, showing at each time indicated how much said train is running behind its scheduled time, but nothing in this act shall be so construed as to compel such railway company or corporation, leasing, operating, or managing any railroad in this state, to post the number, scheduled time, and lateness of such trains, as arriving or departing from such stations aforesaid, while there is no such agent, telegraph, or telephone operator, or any other person on duty; but immediately after such agent, telegraph, or telephone operator, in charge of such station, comes on duty, such railway company or corporation shall cause to be indicated on said bulletin board the number of any trains then due or overdue, or scheduled to be due within three hours, the time any train or trains are due, and how much the trains are running behind their scheduled time; provided, that any such passenger train, not more than ten minutes late, shall be deemed to be on time as to the operation of this act; provided, also, that when such station is connected by telephone with the central exchange in any town or city, such railway company or corporation, upon request of such central exchange, shall promptly notify such central exchange as to the time of arrival of such passenger train, giving the same information as is posted on said bulletin board, and at the said time of said posting.

History: En. Sec. 1, Ch. 67, L. 1917; re-en. Sec. 6584, R. C. M. 1921.

72-630. (6585) Penalty for violation of preceding section. Every rail-way company or corporation, managing, operating, or leasing any railroad in this state, that shall willfully or negligently violate the provisions of the preceding section, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than fifty dollars, nor more than two hundred dollars for each offense; such action to be prosecuted by the county attorney of the county in which the violation occurs, in the name of the state of Montana.

History: En. Sec. 2, Ch. 67, L. 1917; re-en. Sec. 6585, R. C. M. 1921.

Collateral References
Railroads©=255(1-3).
74 C.J.S. Railroads § 456.

72-631. (6586) Passenger rate of three cents per mile. It shall be unlawful for any railroad or railway company operating wholly or in part

in the state of Montana, any of the officers or employees thereof, to charge or receive from any person who is to be conveyed or transported on any of the lines of any such railroad or railway companies from any point within this state to another point within this state, a sum exceeding three cents per mile for the distance to be traveled by such person, nor shall any excess fare greater in amount than ten cents be charged or collected from any passenger with promise of rebate or refund of such excess, and that for children between the ages of five and twelve years, not more than one-half of the rate named in this section shall be charged, and that children under five years of age, when accompanied by parent or guardian, shall be transported free of charge; provided, that no railroad or railway company, or the officers or employees thereof, shall be obliged to accept a single fare for a sum less than five cents; provided, that any such railroad or railway company shall not be precluded from selling mileage books at a rate less than three cents per mile. All persons shall have equal right to purchase such mileage books. That all charges for fares shall end in the figures naught or five and such figures shall be the one nearest to the fare computed under the provisions of this act.

It shall be unlawful for any railroad or railway company operating wholly, or in part, in the state of Montana, as aforesaid, to charge, demand or collect or receive from any person who is to be conveyed or transported on any of the lines of any such railroad or railway company or companies, between points within the state, any sum or amount in excess of, or in addition to, the rates hereinbefore fixed and prescribed for and on account of such person or passenger paying or offering to pay in eash on board of trains of such company or companies, the sums or amounts necessary to be transported in accordance with the provisions of this section. It being intended hereby to prohibit and prevent the practice of exacting any additional sum or sums for transportation on account of the payment of the lawful rates in cash on board train, and the practice of issuing rebate slips, certificates or tickets for such excess sums or amounts.

Any railroad or railway company, or any officer or employee thereof, who shall violate any of the provisions of this section, shall upon conviction thereof, be fined as provided in section 72-633.

History: En. Sec. 1, Ch. 87, L. 1905; re-en. Sec. 4349, Rev. C. 1907; amd. Sec. 1, Ch. 250, L. 1921; re-en. Sec. 6586, R. C. M. 1921.

#### Operation and Effect

In an action to enjoin the intrastate carriers of passengers in Montana from exacting a per mile fare of three and six-tenths cents under authority of an order of the Interstate Commerce Commission issued on January 24, 1921, and to enforce the provision of Ch. 250, Laws 1921 (this section), fixing three cents per mile as the maximum intrastate fare, held, under the decision of the supreme court of the United States in the New York and Wisconsin rate cases (see opinion) decided February 27, 1922, that the Interstate Commerce Commission has power to fix

rates for intrastate travel under the provision of the Transportation Act of 1920 (41 Stat. 456), authorizing it to remove "any undue, unreasonable or unjust discrimination against interstate or foreign commerce," and that the provision of Ch. 250 is therefore not capable of enforcement. State v. Northern Pacific Ry. Co., 62 M 576, 577, 205 P 959.

#### Collateral References

Carriers ← 12, 13, 21.
13 C.J.S. Carriers §§ 514 et seq., 580 et seq.

9 Am. Jur., Carriers, p. 467, §§ 61 et seq.; p. 505, §§ 106 et seq.

Carrier's right or liability in respect of excess of lawful charge over charge

understated where discrimination is forbidden. 83 ALR 245.

Right to maintain action against carrier on the ground of excessiveness of rates filed and published by carrier pursuant to law. 97 ALR 420.

72-632. (6587) To what lines applicable. The provisions of the preceding section of this act shall not apply to independent lines of railroads, or railways operating wholly within the state of Montana, upon which a rate in excess of three cents per mile is now charged, until such time as the state legislature, or other state officers, having power under the laws of Montana to name passenger rates, shall, in their judgment, deem the rate so charged to be excessive.

History: En. Sec. 2, Ch. 87, L. 1905; re-en. Sec. 4350, Rev. C. 1907; re-en. Sec. 6587, R. C. M. 1921.

72-633. (6588) Penalty for violation of law. Any railroad or railway company, or any officer or employee thereof, who shall violate any of the provisions of this act shall, upon conviction thereof, be fined in any sum not less than fifty dollars nor more than five hundred dollars.

History: En. Sec. 3, Ch. 87, L. 1905; re-en. Sec. 4351, Rev. C. 1907; re-en. Sec. 6588, R. C. M. 1921.

Collateral References
Carriers 20.
13 C.J.S. Carriers § 514 et seq.

72-634. (6589) Party injured to share fine. In any and all cases wherein a conviction is secured for a violation of any provision of this act, the party injured shall be entitled to receive one-half of all fines imposed and collected, and the remaining one-half of such fines imposed and collected shall be paid into the school fund of the city in which the action is prosecuted.

History: En. Sec. 4, Ch. 87, L. 1905; re-en. Sec. 4352, Rev. C. 1907; re-en. Sec. 6589, R. C. M. 1921.

72-635. (6590) Tunnel charges prohibited. It shall be unlawful for any person, association, or corporation, operating, leasing, or owning a railroad in the state of Montana, to accept, demand or receive any tunnel charges, or to accept, demand, or receive any extra mileage, or any extra compensation for or on account of any tunnel through which said line of railroad may run; provided, that none of the provisions of this act shall apply to rates or charges for travel to or from points outside of the state of Montana.

History: En. Sec. 1, p. 164, L. 1901; re-en. Sec. 4353, Rev. C. 1907; re-en. Sec. 6590, R. C. M. 1921.

Collateral References Carriers € 22. 13 C.J.S. Carriers §§ 277 et seq., 580 et

72-636. (6591) Violation of law a misdemeanor—penalty. Any person, association, or corporation, agent, or manager, who shall violate any provision of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than two hundred dollars nor more than one thousand dollars for each offense.

History: En. Sec. 2, p. 165, L. 1901; re-en. Sec. 4354, Rev. C. 1907; re-en. Sec. 6591, R. C. M. 1921.

Collateral References Carriers © 21. 13 C.J.S. Carriers § 514 et seq.

72-637. (6592) Confiscation of fuel by carrier prohibited. It shall hereafter be unlawful for any person, railway company, or common carrier to confiscate or take for his or its own use, or for the use of another, any coal or other fuel in transit, except when such coal or other fuel is necessary for the preservation of life or property, or is required for the moving of trains of such common carrier; provided, that in a suit under this act to recover the penalty and damages, the burden of proof shall be on the person, railroad company, or common carrier confiscating the coal or other fuel to show that such coal or other fuel was necessary for the preservation of life or property, or was required for the moving of trains of such common carrier.

History: En. Sec. 1, Ch. 119, L. 1907; Sec. 4355, Rev. C. 1907; re-en. Sec. 6592, R. C. M. 1921.

Collateral References
Carriers 71, 110.
13 C.J.S. Carriers §§ 180 et seq., 521.

72-638. (6593) Liability of carrier for violation of preceding section. Any person, railroad company, or common carrier, who shall confiscate or take any coal or fuel, either for his or its own use or for the use of another, shall be liable to the consignee or owner of such coal or fuel, in double the value of such coal or fuel at the point of shipment, and such other damages as may be caused by the confiscation of such coal; such liability to be exclusive of and in addition to any and all charges for the transportation of such coal or fuel, which charges for the transportation shall be paid by the party confiscating such coal or fuel. But in every case wherein coal or other fuel is taken or used by any such person, railroad company, or common carrier, it shall be the duty of such person, railroad company, or common carrier to notify the consignee by telegram or letter, immediately, of the taking of such coal, and to pay and compensate him therefor within thirty days from the time of the taking.

History: En. Sec. 2, Ch. 119, L. 1907; Sec. 4356, Rev. C. 1907; re-en. Sec. 6593, R. C. M. 1921.

Collateral References
Carriers 76, 128.
13 C.J.S. Carriers §§ 147, 245.

72-639. (6594) Violation of law a misdemeanor—penalty. Any person, corporation, or common carrier, who shall violate the provisions of this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than two hundred dollars.

History: En. Sec. 3, Ch. 119, L. 1907; Sec. 4357, Rev. C. 1907; re-en. Sec. 6594, R. C. M. 1921.

Collateral References
Carriers ≈ 21(1).
13 C.J.S. Carriers §§ 515, 516, 518-521, 589.

72-640. (6595) Obstruction of highway crossings by railroads. It shall hereafter be unlawful for any corporation, association, or company to willfully obstruct, blockade, interfere with, or prevent the free use of any public highway within the state of Montana, where such highway crosses any railroad track outside of incorporated cities and towns, by

stopping any railroad train, car, engine, or locomotive for more than fifteen minutes at any one time, or by placing, depositing, or leaving any article or thing whatsoever on any railroad track at the point where any public highway crosses such track outside of incorporated cities and towns, and any corporation, association, or company, so obstructing, blockading, or interfering with the free use of any such highway, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. This aet shall not be construed as repealing any existing laws prohibiting encroachments upon, or obstruction of, public highways.

History: En. Sec. 1, Ch. 43, L. 1907; Sec. 4358, Rev. C. 1907; re-en. Sec. 6595, R. C. M. 1921.

#### References

Knott v. Pepper, 74 M 236, 244, 239 P

#### Collateral References

Railroads \$\sim 246, 255(4).
74 C.J.S. Railroads \$\ 434, 457.
44 Am. Jur. 580, Railroads, \ 364.

Liability of railroad for injury due to vehicle running into train or car standing

on highway crossing. 15 ALR 901; 56 ALR 1114; 99 ALR 1454 and 161 ALR 111.

Duty and liability of railroad company to one passing around train which is blocking crossing. 16 ALR 1054.

Negligence in leaving cars where they obstruct view at crossing. 47 ALR 287.

Liability of railroad for damages other than those incident to bodily injury for blocking street or highway crossing. 71 ALR 917.

Liability of railroad to adult pedestrian attempting to pass over, under, or between cars obstructing crossing. 27 ALR 2d 369.

72-641. (6596) Trains to come to full stop at grade crossings. No railway company operating trains within this state shall permit any locomotives or cars to cross the tracks of any other railroad, at grade, without coming to a full stop immediately before crossing; provided, however, that if any railway company or companies, using one or more tracks crossing each other or connecting, in any way, at a common grade, shall, by an interlocking plant, signal station, or any other works or fixtures, to be erected by them, or either of them, render it safe to pass over said crossings without stopping, and such plant, works, or fixtures shall have been first approved by the county commissioners of the county wherein such works are to be constructed and used, and the plans of such works and fixtures for such crossing, designating the place of such crossing, shall have been filed with such commissioners, then and in that case the foregoing provisions of this section, requiring the stopping of trains at such crossing, shall not apply to said companies, or either of them; and if said county commissioners shall disapprove any such plans so filed with them, or fail to approve the same within twenty days after the filing thereof with them, such railway companies, or either of them, may apply, in the county where such crossing is situated, to the district court in and for said county, or to a judge thereof in vacation, by petition in writing setting forth the object of such application, and said court or judge shall, thereupon, appoint a time and place for the hearing of said petition, and a copy of the order appointing such time and place, together with a copy of said petition, shall be served upon said county commissioners at least ten days before the day appointed for said hearing, and said district court, or a judge thereof in vacation, shall have full power, upon the hearing of said petition, to grant the prayer thereof, or to make such other order thereon as may be proper in the premises, and the foregoing provisions of this section, requiring the stoppage of trains at crossings, shall not apply to said railway companies, or either of them, if said district court shall, by its order upon said petition, grant the prayer thereof, or otherwise and to any extent approve the construction and use of the interlocking plant, or other structures therein referred to.

History: En. Sec. 1, Ch. 8, L. 1903; re-en. Sec. 4359, Rev. C. 1907; re-en. Sec. 6596, R. C. M. 1921.

Validity and construction of stop statute. 2 ALR 156.

Statutes relating to construction or maintenance of crossing in case of intersecting railroads. 40 ALR 712.

#### Collateral References

Railroads 241.
74 C.J.S. Railroads § 432.

(6597) Fireguards. Every railroad corporation operating its lines of road, or any part thereof, within this state, shall, between the fifteenth day of April and the first day of July in the year 1903, and each succeeding year thereafter, plow in a good and workmanlike manner, covering the sod well, upon each side of its line of road wherever it passes through a range or grazing country, a continuous strip of not less than six feet in width on each side of its track, as a fireguard, which said strip shall, as near as practicable, run parallel with the line or lines of said railroad, and in addition to such plowing, said railroad company shall cause to be burned, between the fifteenth day of July and the fifteenth day of September of each year, all the grass and vegetation between the said plowed strips, and a line of fifty feet inside said plowed strips; provided, that such fireguard so plowed and burned need not be constructed within the limits of any town, village, or city, nor in private fields under cultivation, nor along the line of such railroad whenever the same runs through the mountains, or elsewhere where such plowing or burning would be impracticable; and provided further, that said fireguard, or portion thereof, need not be plowed or burned on or through any lands which may be released from the operation of this act by the board of county commissioners of the county wherein such land is situated, by their written certificate of release filed in the office of the county clerk of the said county; provided further, that said plowing be not less than three hundred feet from the center of the railroad track on each side of same, except in cases of cultivated fields, and then such plowing and burning shall be done closer to such railroad, but not less than seventy feet from the center of the track.

History: En. Sec. 1, p. 163, L. 1901; amd. Sec. 1, Ch. 63, L. 1903; re-en. Sec. 4360, Rev. C. 1907; re-en. Sec. 6597, R. C. M. 1921.

## Operation and Effect

Where plaintiff in an action against a railway company for damages from fire set by sparks from a locomotive bases his action on the failure of the company to comply with the provision of this section, to plow a fireguard on each side of its track where it passes through range or grazing country, he must allege in his

complaint that the property burned was situated in a "range or grazing country"; failure to so allege renders testimony relating to a breach of its provisions inadmissible and instructions relating thereto improper. Missoula Trust & Savings Bank v. Northern Pacific R. Co., 76 M 201, 206 et seq., 245 P 949.

#### Collateral References

Railroads \$\simes 249, 453.
74 C.J.S. Railroads \\$\\$ 435, 484.
22 Am. Jur. 608, Fires, \\$\\$ 23 et seq.

Liability of railroad company for failing to aid in extinguishing fire set by its engine without negligence. 3 ALR 509.

Liability for damages from spread of fire started on railroad property by sparks from locomotives. 42 ALR 783; 111 ALR 1140 and 18 ALR 2d 1081.

Constitutionality of statutes imposing absolute liability for fires, 53 ALR 875.

Interference with extinguishment of fire by operation of train, 71 ALR 917.

72-643. (6598) County commissioners may plow guard and recover expense. If any railroad company fails to comply with any of the provisions of the preceding section, the board of county commissioners of the county wherein such violation occurs shall cause the neglected plowing or burning, or both, therein provided for, to be done, and may, in a suit to be brought in their name as said board, in the district court having jurisdiction, recover double the amount of the cost of such plowing or burning, or both, with reasonable attorney fees to be fixed by the court, and such railroad company shall be liable further for all damages caused by its failure to comply with this act.

History: En. Sec. 2, p. 164, L. 1901; 4361, Rev. C. 1907; re-en. Sec. 6598, R. amd. Sec. 2, Ch. 63, L. 1903; re-en. Sec. C. M. 1921.

(6599) Duty to construct drain and ditches. It shall be the duty of every corporation, company, or person owning or operating any railroad, or branch thereof, in this state, and of any corporation, company, or person constructing any railroad in this state, within three months after the completion of the same through any county in this state, to cause to be constructed and maintained suitable ditches and drains along each side of the roadbed of such road, or to construct culverts or openings through such roadbed to connect with ditches or drains, or watercourses, so as to afford sufficient outlet to drain and carry off the water along such railroad, whenever the draining of such water has been obstructed or rendered necessary by the construction of such railroad; provided, that none of the drains or ditches herein referred to shall be required to be constructed by any of the persons or corporations herein named or described, except when required to remove and drain off water accumulated upon property adjacent to or upon the right of way whose natural channel or outlet has been destroyed or impaired by the embankment of such railway so constructed as aforesaid. And in case such corporation, company, or person shall fail or neglect to construct and maintain such ditches or drains as are herein required, within the time limited in this section, the board of county commissioners of any county, through which such railroad has been, or may be constructed and located, and in which the draining herein required has been neglected, is hereby authorized and required, upon the petition of twenty landowners of such county along the line of and contiguous to such railroad, to cause such ditches or drains as are herein required to be constructed and maintained, and said board of county commissioners may maintain an action against such corporation, company, or person so failing to comply with the provisions of this section, in any court of competent jurisdiction, in the name of such county, and shall be entitled to recover all costs and expenses incurred in the construction and maintenance of said drains or ditches.

History: En. Sec. 2, Ch. 101, L. 1903; re-en. Sec. 4362, Rev. C. 1907; re-en. Sec. 6599, R. C. M. 1921.

#### References

Le Munyon v. Gallatin Valley R. Co., 60 M 517, 199 P 915.

#### Collateral References

Railroads \$108.
74 C.J.S. Railroads \$186 et seq.

Construction of statutes requiring railroads to provide for the drainage or flow of waters. 19 ALR 2d 967.

72-645. (6602) Medical aid to injured trainmen. In case any railroad trainman or employee of any railroad doing business in this state shall be injured during his regular course of employment, any employee of said railroad is hereby empowered and authorized to call upon and retain the services of the nearest practicing physician or surgeon to care for and treat any such injured trainman or employee, during and until such time as one of the regularly employed and paid physicians or surgeons of such railroad corporation is able to render such service.

History: En. Sec. 1, Ch. 95, L. 1909; amd. Sec. 1, Ch. 45, L. 1921; re-en. Sec. 6602, R. C. M. 1921.

#### Collateral References

Master and Servant ≈77. 56 C.J.S. Master and Servant § 161 et

72-646. (6603) Compensation of physician or surgeon. In cases where the services of any physician or surgeon other than the regularly employed physician or surgeon of the railroad corporation are retained and hired as provided in the preceding section, such physician or surgeon shall be compensated and paid a reasonable fee for such services performed by him as provided in the preceding section.

History: En. Sec. 2, Ch. 95, L. 1909; re-en. Sec. 6603, R. C. M. 1921.

72-647. (6604) Refusal to pay compensation a misdemeanor. If any railroad corporation refuses or neglects to pay for the services of any such physician as hereinbefore provided for, within a reasonable time after such physician or surgeon has rendered the services therefor, such railroad corporation shall be guilty of a misdemeanor.

History: En. Sec. 3, Ch. 95, L. 1909; re-en. Sec. 6604, R. C. M. 1921.

Collateral References

Master and Servant ≈84. 56 C.J.S. Master and Servant § 160(13).

72-648. (6605) Liability for death or personal injury. Every person or corporation operating a railroad in this state shall be liable in damages to any person suffering injury while he is employed by such person or corporation so operating any such railroad, or, in case of the death of such employee, instantaneously or otherwise, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee, and, if none, then of such employee, and, if none, then of such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such person or corporation so operating such railroad, in or about the handling, movement, or operation of any train, engine, or car, on or over such railroad, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

History: En. Sec. 1, Ch. 29, L. 1911; re-en. Sec. 6605, R. C. M. 1921.

#### Cross-Reference

Placing passenger cars in front of freight cars, penalty, sec. 94-35-176.

## Action Joining Causes under Similar State and Federal Liability Acts Not Removable to Federal Courts

A plaintiff did not waive right to trial in state court by joining, with cause of action under Federal Employers' Liability Act, a cause of action under similar state statutes based on identical facts, and action was not removable to federal court. Where injured railroad employee is employed in interstate commerce, his remedy under Federal Employers' Liability Act is exclusive, such act superseding similar state acts (Federal Employers' Liability Act sec. 1 et seq., 45 U. S. C. A. sec. 51 et seq.). Hoepfner v. Northern Pacific Ry. Co., 61 F Supp 819, 822.

#### Burden of Proof

In an action by a railroad section hand to recover for injuries caused by a tie falling upon him from a car which he, with others, were unloading, a nonsuit was properly granted, his evidence not disclosing negligence on the part of anyone to which the fall of the tie and the consequent injuries could be said to have been attributable. (Mr. Justice Cooper dissenting.) Hassan v. Northern Pacific Ry. Co., 60 M 105, 108, 198 P 446.

In a personal injury action by an employee against his employer, whether based upon the Employers' Liability Act (this act) or not, plaintiff has the burden of proving negligence. Hassan v. Northern Pacific Ry. Co., 60 M 105, 108, 198 P 446.

#### Common-Law Liability

The purpose of the legislature in enacting this legislation was to substitute for the benefit of railway employees the action provided by it, in place of the commonlaw action, and, in case of death, to create a new cause of action in favor of the dependents named for the pecuniary loss suffered by them. Cornell v. Great Northern Ry. Co., 57 M 177, 187 P 902.

## Definition of Railroad

The word "railroad," as used in this act, includes a road used for logging purposes. Regan v. Montana Logging Co., 53 M 153, 158, 162 P 388.

## Includes Repair of Rolling Stock

This statute making railroads liable to injured employees because of negligent handling of cars, or defect or insufficiency in cars or other equipment, includes the repair of rolling stock, and was applicable where carman fell from ladder while re-

placing vertical siding of freight car in repair shop. Great Northern Ry. Co. v. Wojtala, 112 F 2d 609, 611.

#### Liberal Construction

This statute is remedial in its nature, and its operation ought not to be limited by narrow construction. Regan v. Montana Logging Co., 53 M 153, 161, 162 P 388; Palmer v. Great Northern Ry. Co., 119 M 68, 170 P 2d 768, 772.

### Limitation of Action

Where an amended complaint in an action brought under the federal liability act did not state a new cause of action, the contention that the action was barred by the two-year limitation prescribed therein is without merit, the amendment relating back to the date of the commencement of the action unaffected by the intervening lapse of time. Gillespie v. Great Northern Ry. Co., 63 M 598, 607, 208 P 1059.

## "Operating"

Where plaintiff, a brakeman on defendant's logging road, was also required to assist in loading and unloading cars, and while doing so he was injured by the breaking of an appliance, the defendant company was "operating" its road at the time of the injury, within the meaning of this act. Regan v. Montana Logging Co., 53 M 153, 159, 162 P 388.

#### Pleading

Where plaintiff locomotive engineer had but one cause of action against defendant railway company, i.e., its wrongful act in permitting an engine to move on the same track at the same time and in the opposite direction to the engine operated by plaintiff, causing a collision, and in his complaint brought under the federal liability act alleged that he was injured while in the engine whereas at the trial he testified that the injury occurred by coming in contact with the ground as a result of his jumping from the engine to escape the collision, amended complaint filed by leave of court to conform to the facts, examined and held not to state a new and different cause of action, and therefore refusal to strike it from the files was proper. Gillespie v. Great Northern Ry. Co., 63 M 598, 607, 208 P 1059.

Where the complaint of a boilermaker who suffered the loss of the sight of one of his eyes while working with an air hammer calking bolts in the firebox of a locomotive, after alleging by way of conclusion that it was the duty of defendant company to furnish him with reasonably safe tools and appliances, contained additional averments as to the conditions under which he was required to work and

that it was necessary for defendant to furnish him with proper goggles to protect plaintiff's eyes from flying pieces of steel resultant from the use of the hammer, the pleading was sufficient to state a cause of action. Morelli v. Great Northern Ry. Co., 89 M 603, 610, 300 P 210.

#### Scope of Employment

The question whether, when plaintiff, a section hand, was injured by a collision while resting in a caboose standing upon the main line after the dinner hour and waiting to be transported to work, he was or was not acting within the scope of his employment was for the jury's determination where the evidence relating thereto was not conclusive either way. Wegge v. Great Northern Ry. Co., 61 M 377, 385, 203 P 360.

A conductor of a work train was not only acting in furtherance of the operations entrusted to him, but also within the scope of his authority when, in the temporary absence of the engineer, he assumed charge of the locomotive and in his endeavor to switch a caboose from the main line, where it was a menace to life and limb on account of passing trains, to a sidetrack and in doing so caused a collision with the caboose injuring plaintiff. Wegge v. Great Northern Ry. Co., 61 M 377, 385, 203 P 360.

The state railroad Employers' Liability Act covers injuries to railroad employees while engaged in any part of work connected with, and necessarily and directly contributing to, operation of railroad or handling or movement of any train, engine or ear over it. Palmer v. Great Northern Ry. Co., 119 M 68, 170 P 2d 768, 770.

## What Are Appliances

Quaere: Are goggles, worn by railway boilermakers while using an air hammer in fastening bolts, to protect their eyes from flying particles of steel, "tools and appliances" under the general rule making it the duty of the master to furnish his

servants a safe place to work and reasonably safe tools and appliances with which to work, or "appliances" and "machinery" within the meaning of the Employers' Liability Act (this section)? Morelli v. Great Northern Ry. Co., 89 M 603, 610, 300 P 210.

Safety shoes used by laborer in railroad shops were "appliances" and "equipment" within the meaning of this section. Palmer v. Great Northern Ry. Co., 119 M 68, 170 P 2d 768, 775.

# When Jury's Verdict Conclusive as to Negligence

Where in an action for damages for the death of a section man struck by a work train being pushed in front of the engine and approaching from his rear while he was shoveling cinders from the track, the evidence on the question of defendant's negligence was in direct conflict, that of plaintiff being substantial to the effect that no warning was given by either bell or whistle and that there was no one riding on the front end of the train to guard against danger, the jury's determination that defendant was negligent is conclusive. Kamboris v. Chicago, M. & St. P. R. Co., 62 M 88, 91, 203 P 859.

#### References

Crowley v. Polleys Lumber Co., 92 M 27, 9 P 2d 1068.

#### Collateral References

Master and Servant ← 87, 101(9), 110-113, 137.

56 C.J.S. Master and Servant §§ 173, 227-230.

10 Am. Jur., Carriers, p. 105, §§ 1121 et seq.; p. 155, §§ 1236 et seq.; 44 Am. Jur. 625, Railroads, §§ 412 et seq.

Master's liability for servant's injury or death caused in whole or in part by act of God. 62 ALR 2d 796.

Railroad's liability for servant's condition or injury resulting in dermatitis. 74 ALR 2d 1029.

72-649. (6606) Contributory negligence—diminution of damages. In all actions hereafter brought against any such person or corporation so operating such railroad, under or by virtue of any of the provisions of this act, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee; provided, that no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such person or corporation, so operating such railroad, of any statute enacted for the safety of employees contributed to the injury or death of such employee.

History: En. Sec. 2, Ch. 29, L. 1911; re-en. Sec. 6606, R. C. M. 1921.

## Apportionment of Damages

Contributory negligence of plaintiff employee in an action brought under the Federal or State Employers' Liability Acts does not bar recovery but is a fact which may be considered by the jury in apportioning damages. Kamboris v. Chicago, M. & St. P. R. Co., 62 M 88, 91, 203 P

#### Mitigation of Damages

Contributory negligence on the part of a railroad employee does not bar his right to recover damages for injuries received during the course of his employment; the jury, in such case, being required to diminish the damages "in proportion to the amount of negligence attributable to such employee." Hall v. Northern Pacific Ry. Co., 56 M 537, 186 P 340; Palmer v. Great Northern Ry. Co., 119 M 68, 170 P 2d 768,

This act does not change in any particular the form of the statement of plaintiff's cause of action from that at common law, but does require all the other pleadings to be so formulated as to present the issues arising upon the defenses permitted by it, including the matter which may be alleged in mitigation of damages. Cornell v. Great Northern Ry. Co., 57 M 177, 187 P 902.

## Pleading and Proof

This act does not change the rule that in a personal injury action the burden of pleading and proving contributory negligence on the part of the plaintiff is upon the defendant. Cornell v. Great Northern Ry. Co., 57 M 177, 187 P 902.

Under the rule of comparative negligence declared by this chapter, contributory negligence on the part of plaintiff is a partial defense which must be pleaded. Cornell v. Great Northern Ry. Co., 57 M 177, 187 P 902.

Failure of carman, injured by fall, to obtain scaffold rather than ladder, which assistant foreman allegedly directed him to use when replacing siding of freight car in repair shop, would not be more than contributory negligence, which does not bar recovery under the Montana Employers' Liability Act. Great Northern Ry. Co. v. Wojtala, 112 F 2d 609, 612.

#### References

Morelli v. Great Northern Ry. Co., 89 M 603, 612, 300 P 210; Hoepfner v. Northern Pacific Ry. Co., 61 F Supp 819.

#### Collateral References

Master and Servant € 228; Negligence

56 C.J.S. Master and Servant § 425; 65 C.J.S. Negligence § 172.

10 Am. Jur. 276, Carriers, §§ 1474 et seq.

Construction and effect of comparative negligence rule where there is more than one defendant, or where negligence of nonparties contribute to the injury. 92 ALR 691.

The doctrine of comparative negligence and its relation to the doctrine of contributory negligence. 114 ALR 830.

**72-650.** (6607) **Assumption of risk.** An employee of any such person or corporation so operating such railroad shall not be deemed to have assumed any risk incident to his employment, when such risk arises by reason of the negligence of his employer, or of any person in the service of such employer.

History: En. Sec. 3, Ch. 29, L. 1911; re-en. Sec. 6607, R. C. M. 1921.

#### Defense of Assumed Risk

The defense of assumption of risk may be interposed as a bar in an action for personal injuries to an employee when they have been caused by hazard which is incident to the particular business, or when they have been brought about by an increased hazard occasioned by the failure of the employer to perform his primary duty with relation to the safety of the employee, if the latter was aware of such increased hazard or it was so obvious that an ordinarily prudent person under like circumstances would have observed and appreciated it. Matson v. Hines, 63 M 214, 222, 207 P 474.

In an action against a railway company under this act for injuries to feet of shop laborer resulting from wearing defective and improper safety shoes furnished by the railway company, the defense of assumed risk was not available to defendant. Palmer v. Great Northern Ry. Co., 119 M 68, 170 P 2d 768, 764.

## Knowledge of Danger

In an action by a section hand for injuries sustained in lifting a rail, in which the negligence charged was failure of defendant company to furnish a sufficient number of men to assist him in doing the work in hand, held that plaintiff, twenty-eight years of age, familiar with the work he was engaged in, and who knew, as testified to by him, that it required from six to eight men to lift a rail, weighing from 750 to 800 pounds, with reasonable safety to the men doing the lifting, assumed the risk of injury from

overstrain in attempting to lift it in company with three others. (Mr. Justice Cooper dissenting.) Matson v. Hines, 63 M 214, 222, 207 P 474.

Where an employee, knowing that obedience to an order of his forman will

Where an employee, knowing that obedience to an order of his foreman will expose him to injury and that the danger incident to obedience is obvious, glaring and imminent, obeys the command, suffering injury, he assumes the risk; where, however, he has no independent knowledge of danger and relies upon the superior knowledge of his employer, he may rely upon the latter's judgment and assume that the order could be safely obeyed without laying himself open to the defense of assumption of risk, Matson v. Hines, 63 M 214, 222, 207 P 474.

Under state railroad Employers' Liabil-

Under state railroad Employers' Liability Act employee generally assumes risks normally incident to occupation in which he voluntarily engages, but does not assume other and extraordinary risks and those due to employer's negligence until he is made aware thereof or they become so obvious and immediately dangerous that an ordinarily prudent person would observe and appreciate them. Palmer v. Great Northern Ry. Co., 119 M 68, 170 P 2d 768, 774.

Whether carman falling from ladder which assistant foreman allegedly directed him to use until scaffold could be found for use in replacing part of siding of freight car in defendant railroad's repair

shop assumed the risk of his employment, or risk in using a simple tool, was a jury question. Great Northern Ry. Co. v. Wojtala, 112 F 2d 609.

#### References

Morelli v. Great Northern Ry. Co., 89 M 603, 612, 300 P 210; Hoepfner v. Northern Pacific Ry. Co., 61 F Supp 819.

## Collateral References

Master and Servant \$204.
56 C.J.S. Master and Servant \$358.
35 Am. Jur. 715, Master and Servant,
§§ 293 et seq.; 38 Am. Jur. 845, Negligence, §§ 171-173.

Contributory negligence or assumption of risk in disobeying rules or directions of master under counter direction by superior. 23 ALR 315.

Right to recover for death of, or injury to servant due to his conscious exposure in attempt to save property. 61 ALR 579.

Assumption of risk of over strain consequent upon failure of other employee to lift his share, 74 ALR 157.

Statute denying to employer defense of assumption of risk as affecting simple tool rule. 91 ALR 786.

Assumption of risk and contributory negligence with injuries arising from improper manner of loading or fastening load on freight car. 106 ALR 1140.

72-651. (6608) Exemption from liability by contract, etc. Any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any such person or corporation so operating such railroad to exempt itself from any liability created by this act, shall, to that extent, be void; provided, that in any action brought against any such person or corporation so operating such railroad, under or by virtue of any of the provisions of this act, such person or corporation may set off therein any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employee, or the person entitled thereto, on account of the injury or death for which said action is brought.

History: En. Sec. 4, Ch. 29, L. 1911; re-en. Sec. 6608, R. C. M. 1921.

17 C.J.S. Contracts § 262; 56 C.J.S. Master and Servant § 197.
9 Am. Jur. 868, Carriers, §§ 732 et seq.

#### Collateral References

Contracts € 114; Master and Servant € 100.

72-652. (6609) Headlights for locomotives. It shall be the duty of any person, corporation, or company operating any railroad or railway in this state, within one year after the passage of this act, to equip all locomotive engines used in the transportation of trains over said railroad or railway with electric headlights of not less than fifteen hundred candle power, measured without the aid of a reflector, or other headlights of not

less than fifteen hundred candle power, measured without the aid of a reflector; provided, that this act shall not apply to locomotive engines regularly used in the switching of trains.

History: En. Sec. 1, Ch. 18, L. 1909; re-en. Sec. 6609, R. C. M. 1921.

Collateral References

Railroads 229.
74 C.J.S. Railroads § 424.
44 Am. Jur. 499, Railroads, § 277.

Duty as to forward light on car or train preceding engine or on engine running backwards. 15 ALR 1529.

Liability of railroad company for injury to livestock frightened by headlights. 29

ALR 1546.

72-653. (6610) Penalty for not using. Any person, corporation, or company operating any railroad or railway in this state, violating the provisions of the preceding section, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense.

History: En. Sec. 2, Ch. 18, L. 1909; re-en. Sec. 6610, R. C. M. 1921.

Collateral References
Railroads \$\sim 255\$.
74 C.J.S. Railroads § 456.

(6611) Issuance of bills of lading by railroad station agents. All railway companies operating in the state of Montana, which do not permit bills of lading to be issued by other employees than agents, shall be required to have said bills of lading issued by the station agent at the nearest station where a station agent is regularly maintained in the direction toward which the shipment is destined. The conductor of the train which receives the shipment at its point of origin shall deliver to the agent at the nearest station at which an agent is maintained through which said shipment moves, immediately upon the arrival of the train carrying said shipment at said agency station, all data necessary for the issuance of a bill of lading for said shipment. The agent shall immediately issue said bill of lading, and shall deliver the same to the shipper or his agent, or shall, within twenty-four hours after the receipt of said data from the said conductor, for shipment of twenty thousand pounds or over, deposit the said bill of lading in a United States post office, addressed and registered to the consignor, his agent or attorney, of said shipment to his proper post-office address, shipments of less than twenty thousand pounds to be mailed without registering.

History: En. Sec. 1, Ch. 24, L. 1917; re-en. Sec. 6611, R. C. M. 1921.

Cross-Reference

Bills of lading, secs. 8-501 to 8-506.

Collateral References

Carriers 47.

13 C.J.S. Carriers § 122 et seq.

9 Am. Jur. 662, Carriers, §§ 386 et seq.

Issuance or nonissuance of bill of lading as affecting delivery of freight to carrier. 113 ALR 1469.

Right of carrier as against transferee of bill of lading issued for interstate shipment since Federal Bill of Lading Act to deny receipt of goods. 130 ALR 1315.

72-655. (6612) Violation of preceding section a misdemeanor—penalty. Any railway company operating in the state of Montana violating any provisions of this act shall be guilty of a misdemeanor, and liable to a fine of not less than fifty dollars nor more than one thousand dollars.

History: En. Sec. 2, Ch. 24, L. 1917; re-en. Sec. 6612, R. C. M. 1921.

Collateral References

Carriers \$38(1).
13 C.J.S. Carriers §§ 515, 516, 518-521, 524-526, 543, 589.

72-656. (6613) Suitable cars must be furnished for grain or bulk shipments. Hereafter all boxcars furnished by railroad or railway companies, for the transportation of grain or other commodities in bulk, shall be of such construction and in such order as to prevent leakage when such commodities are placed or hauled therein; and it is hereby made the duty of all railroad or railway companies to furnish such cars in such condition.

History: En. Sec. 1, Ch. 52, L. 1917; re-en. Sec. 6613, R. C. M. 1921.

#### Cross-References

Carriage of freight, secs. 8-410 to 8-609. Carrying animals in cruel manner, penalty, sec. 94-1204.

Collateral References

Carriers 40; Railroads 229.

13 C.J.S. Carriers §§ 35-37, 42, 53; 74
C.J.S. Railroads § 424.

72-657. (6614) Duty of railroad, after notice, to place cars in proper condition. Whenever boxcars placed for loading grain or other commodities in bulk are found to be in such condition that they will not afford safe transportation for such commodities, the railroad or railway company shall, upon written complaint to the agent or other person in authority, by the shipper or his representative, who proposes to load said car or cars, within twenty-four hours, cause said car or cars to be properly cleaned and coopered and put in such repair as will afford safe transportation for the commodity to be shipped.

History: En. Sec. 2, Ch. 52, L. 1917; re-en. Sec. 6614, R. C. M. 1921.

72-658. (6615) Right of shipper upon default of railroad company. In case such railroad or railway company shall fail, within twenty-four hours after written complaint has been made by the shipper or his representative, to clean and safely cooper such car or cars, then such shipper or his representative shall have authority to enter upon such car or cars, and properly and safely cooper and clean the same; and said railroad or railway company shall pay for the labor expended in such repairs at the rate of three dollars per eight-hour day, and the actual cost of material used, providing that such charge shall in no case exceed five dollars for each car so coopered.

History: En. Sec. 3, Ch. 52, L. 1917; re-en. Sec. 6615, R. C. M. 1921.

Collateral References

Carriers 40, 45; Railroads 229. 13 C.J.S. Carriers §§ 33-38, 42, 49, 53, 54; 74 C.J.S. Railroads § 424.

72-659. (6616) Repairs may be made by shipper without notice, when. In case any car or cars are placed at a station or siding where there is no representative of said railroad or railway company upon whom complaint may be served, then and in such case the shipper or his representative may at once enter upon the said car or cars and clean and make such repairs as are necessary, and shall be paid for the labor and material expended, as provided in the preceding section.

History: En. Sec. 4, Ch. 52, L. 1917; re-en. Sec. 6616, R. C. M. 1921.

72-660. (6617) Demurrage not to accrue during repairs. It is further provided that no demurrage shall accrue or be collected for the time elaps-

ing while such car or cars are being repaired or cleaned or coopered in accordance herewith.

History: En. Sec. 5, Ch. 52, L. 1917; re-en. Sec. 6617, R. C. M. 1921.

Collateral References
Carriers©~100.
13 C.J.S. Carriers § 335 et seq.

72-661. (6618) Railroad company liable for cost of repairs, cleansing or cooperage. Any person making the repairs upon or cleaning or coopering the cars of any railroad or railway company, as herein provided, may recover the amounts expended therefor in an action at law, upon the refusal of the railroad or railway company to reimburse him.

History: En. Sec. 6, Ch. 52, L. 1917; re-en. Sec. 6618, R. C. M. 1921.

72-662. (6619) Duty of railroad commission to enforce law. It is hereby made the duty of the railroad commission of the state of Montana to enforce the provisions of this act.

History: En. Sec. 7, Ch. 52, L. 1917; re-en. Sec. 6619, R. C. M. 1921.

Collateral References Carriers 10.

13 C.J.S. Carriers §§ 18, 568.

Prohibition to control action of public service commission, 115 ALR 3 and 159 ALR 627.

72-663. (6620) Locomotive and electric motors to be equipped with numbers. It shall be the duty of every person, corporation, or company operating a railroad or railway in this state to equip all locomotive engines and electric motors used in hauling trains over said railroad or railway with suitable numbers, which numbers shall be displayed at the front and both sides of the headlight on said locomotive engine, or electric motor and to be such size as to be easily read from a passing or meeting train.

History: En. Sec. 1, Ch. 145, L. 1919; re-en. Sec. 6620, R. C. M. 1921.

Collateral References
Railroads 5229.
74 C.J.S. Railroads \$427.

72-664. (6621) Hearing of complaint by railroad commission. When a complaint is made to the board of railroad commissioners that any person, corporation, or company operating a railroad or railway in this state, has failed to comply with the provisions of this act, such board shall order a hearing, and shall serve a notice on such person, corporation, or company, at least fifteen days before the date set for such hearing, which notice may be served upon any agent of such person, corporation, or company. At the conclusion of such hearing, the said board of railroad commissioners may make such order in the premises as is deemed necessary, and may prescribe the time within which all such locomotive engines shall be equipped with such numbers.

History: En. Sec. 2, Ch. 145, L. 1919; re-en. Sec. 6621, R. C. M. 1921.

72-665. (6622) Violation of law a misdemeanor—penalty. Any person, corporation, or company operating a railroad or railway in this state, who violates any of the provisions of this act, shall be deemed guilty of a mis-

demeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars for each offense.

History: En. Sec. 3, Ch. 145, L. 1919; re-en. Sec. 6622, R. C. M. 1921.

Collateral References
Railroads \$\infty 255.
74 C.J.S. Railroads § 456.

72-666. (6623) Compensation of railroad employees on removal of division point. That when any railroad or railway company operating its line of road in, into, or through the state of Montana shall move any of its division points or terminals, it shall be liable to any employee of such railroad or railway company for any damage sustained by such employee by reason of any decrease in value of any real property actually occupied by such employee as his place of residence, which decrease in value shall be caused by reason of the removal of such division point or terminal, provided such employee shall have in such property so damaged an estate of freehold. Such damages shall be collectible in any court of competent jurisdiction.

History: En. Sec. 1, Ch. 159, L. 1921; re-en. Sec. 6623, R. C. M. 1921.

Collateral References

Master and Servant ₹ 72.

56 C.J.S. Master and Servant § 116.

72-667. (6624) Proviso—railroad may post statement. Provided, that when any railroad or railway company in good faith determines upon a change or removal of any division point or terminal, and in good faith posts prominently about its station house, shops, and yards a statement of its intention so to do, in such manner as to give reasonable notice thereof to such employee, it shall not be liable as hereinbefore provided for any decrease in value of any interest in any property purchased after the time of such posting, provided that such division point or terminal shall be changed or removed within six months after the date of such posting.

History: En. Sec. 2, Ch. 159, L. 1921; re-en. Sec. 6624, R. C. M. 1921.

- 72-668. Track motor cars windshield wipers canopy on top. Every person, firm, or corporation operating or controlling any railroad running through or within this state as a common carrier shall on or before January 1, 1959, equip each of its track motor cars with:
- (1) A windshield of safety glass and a device for wiping rain, snow and other moisture therefrom; such device shall be maintained in good order, and so constructed as to be controlled by the operator of said track motor car, and
- (2) Upon request of the foreman, a canopy or top of such construction as to adequately protect the occupants thereof from the rays of the sun, rain, snow, or other inclement weather.

History: En. Sec. 1, Ch. 109, L. 1957.

72-669. Head and rear lights on track motor cars. Every person, firm or corporation, operating or controlling any railroad running through or within this state as a common carrier shall on or before January 1, 1959, equip each of its track motor cars used during the period from thirty

(30) minutes before sunset, to thirty (30) minutes after sunrise, with an electric headlight of such construction and with sufficient candle power to be plainly visible at a distance of not less than three hundred (300) feet in advance of such track motor car, any track obstruction, landmark, warning sign, or grade crossing, and further equip such track motor car with a red rear electric light of sufficient candle power to be plainly visible at a distance of not less than three hundred (300) feet.

History: En. Sec. 2, Ch. 109, L. 1957.

72-670. Violation—misdemeanor. Every violation of any section of this act is a misdemeanor.

History: En. Sec. 3, Ch. 109, L. 1957.

## CHAPTER 7

## RAILROAD CROSSINGS—REGULATION

Section 72-701. Railroad crossings outside of incorporated cities and towns.

72-702. Railroad crossing in unincorporated towns or villages.

72-703. Order of county commissioners requiring construction of crossing.

72-704. Time within which crossing must be completed.

72-705. Power of railroad commission with reference to crossings.

72-706. Hearing to determine reasonableness of order.
72-707. Petition for overhead or underground crossing—hearing of petition.

72-708. Action to determine justness or reasonableness of order.

72-709. Extension of time for compliance with order.

72-710. Liability of railroad companies not affected by law. 72-711. Penalty for failure to comply with order for construction. 72-712. "Railroad company" defined.

72-701. (6625) Railroad crossings outside of incorporated cities and towns. At all places in the state of Montana, outside of incorporated cities and towns where a lawfully established public highway now crosses or shall hereafter cross any railroad, it shall be the duty of the railroad company, owning or operating such railroad, to construct and thereafter maintain, in proper condition, a good and safe crossing.

History: En. Sec. 1, Ch. 148, L. 1919; re-en. Sec. 6625, R. C. M. 1921.

#### Cross-Reference

Highways established across railroads, expenses, sec. 32-413.

#### References

Knott v. Pepper, 74 M 236, 244, 239 P 1037.

## Collateral References

Railroads \$\sim 92-97.

74 C.J.S. Railroads §§ 148, 156.

44 Am. Jur., Railroads, p. 446, §§ 227 et seq.; p. 607, §§ 395 et seq.

Constitutionality of statute requiring railroad to construct and maintain private crossing. 12 ALR 227.

Municipal corporation's power to require railroad to eliminate grade crossings. 35 ALR 1322 and 36 ALR 1122.

Constitutional power to compel railroad company to relocate or reconstruct highway crossing or to pay or contribute to expense thereof. 55 ALR 660; 62 ALR 815 and 109 ALR 768.

Customary or statutory signals from train as measure of railroad's duty as to warning at highway crossing. 5 ALR 2d

72-702. (6626) Railroad crossing in unincorporated towns or villages. In any unincorporated community ordinarily known as a village or town, where the public necessity and convenience require a railroad crossing at the intersection of the railroad with any street or highway, whether lawfully established or otherwise, which is commonly used by the public, the board of county commissioners of the county may order the construction and maintenance of such railroad crossing, and upon such order becoming final and effective, it shall be the duty of the railroad company to construct and maintain, in proper condition, a good and safe crossing. The board of county commissioners may order more than one railroad crossing in such unincorporated community, as in this section provided, when the public necessity and convenience require more than one such crossing to afford reasonable facilities for public travel.

History: En. Sec. 2, Ch. 148, L. 1919; re-en. Sec. 6626, R. C. M. 1921.

72-703. (6627) Order of county commissioners requiring construction of crossing. Whenever any board of county commissioners shall order the construction of any railroad crossing, said board shall enter an order upon its minutes specifying the place of such crossing, and a copy of said order shall be served upon the railroad company, and a copy shall also be immediately mailed to the board of railroad commissioners of the state of Montana. Service of said order may be made upon the railroad company by delivering such copy to any station agent employed in connection with the operation of said railroad in said county.

History: En. Sec. 3, Ch. 148, L. 1919; re-en. Sec. 6627, R. C. M. 1921.

72-704. (6628) Time within which crossing must be completed. It shall be the duty of a railroad company to construct a crossing ordered by the board of county commissioners of any county within sixty days after service of such order; provided, however, that in case any crossing shall be ordered requiring any extended period of construction, such additional time as is reasonably necessary to complete the same shall be allowed by the said board of railroad commissioners upon the proper application for such extension.

History: En. Sec. 4, Ch. 148, L. 1919; re-en. Sec. 6628, R. C. M. 1921.

72-705. (6629) Power of railroad commission with reference to crossings. The said board of railroad commissioners is hereby given full power to enforce the orders of any board of county commissioners for the construction of railroad crossings, and is likewise given full power to pass upon the reasonableness of any such order to modify, change, or annul the same.

History: En. Sec. 5, Ch. 148, L. 1919; re-en. Sec. 6629, R. C. M. 1921.

## Collateral References

Customary or statutory signals from train as measure of railroad's duty as to warning at highway crossing. 5 ALR 2d 112.

72-706. (6630) Hearing to determine reasonableness of order. Whenever any railroad crossing has been ordered by the county commissioners, as herein provided, the railroad company may, within thirty days after the service of such order, serve upon the board of railroad commissioners a notice stating why such order is considered unreasonable or unjust, and

request that the board of railroad commissioners hold a hearing for the purpose of determining whether or not the construction of such crossing should reasonably be required. The board of railroad commissioners shall thereupon institute a hearing for said purpose, and all interested parties shall be given reasonable notice and an opportunity to be heard, and said board of railroad commissioners may, after such hearing, either affirm, modify, or annul such order.

History: En. Sec. 6, Ch. 148, L. 1919; re-en. Sec. 6630, R. C. M. 1921.

72-707. (6631) Petition for overhead or underground crossing—hearing of petition. No railroad crossing, other than a grade crossing, shall be ordered by any board of county commissioners. The board of railroad commissioners may, however, upon petition or request in writing of any board of county commissioners, order an overhead or underground crossing at any place where a railroad crossing has not been constructed, and is required by the provisions of this act, provided, in its judgment, the safety, necessity, and convenience of the traveling public require such crossing. When any such petition or request is presented, the board of railroad commissioners shall fix a date for hearing the same, and shall give at least ten days' written notice to the board of county commissioners, and the owner or operator of the railroad to be affected by such order, of the time fixed for the hearing. At such hearing, the said board of railroad commissioners shall hear all testimony offered as to the safety, necessity, and convenience of the traveling public requiring such a crossing, the expense of constructing and maintaining the same, and make such investigation and inspection of the conditions at the place of crossing as may be deemed necessary or advisable, and shall thereupon determine whether such order should be made. In the event an overhead or underground crossing is ordered, the board of railroad commissioners may, in its discretion, require the same to be constructed and maintained by and at the expense of the railroad company, or may apportion the expense between the railroad company and the county in which said crossing is located. The part of the expense apportioned to said county, if any, shall be paid to the railroad company from the funds of said county properly applicable to the payment of such expense.

History: En. Sec. 7, Ch. 148, L. 1919; re-en. Sec. 6631, R. C. M. 1921.

72-708. (6632) Action to determine justness or reasonableness of order. The board of county commissioners, or the railroad company affected by an order or decision of the board of railroad commissioners made pursuant to the provisions of this act, may commence an action in any court having jurisdiction to determine the justness and reasonableness of such order or decision, and in any such action the order or decision sought to be reviewed shall prima facie be deemed just, reasonable, and proper.

History: En. Sec. 8, Ch. 148, L. 1919; re-en. Sec. 6632, R. C. M. 1921.

72-709. (6633) Extension of time for compliance with order. In the event of an application to the board of railroad commissioners to review

any order made by the board of county commissioners, and in the event of any action to review any order or decision of the board of railroad commissioners as herein provided, the time within which to comply with said order shall be extended, and the railroad company shall have sixty days after the said order or decision becomes final and effective within which to comply with the same. The time for compliance as herein provided may be extended, for good cause shown, by the board of railroad commissioners of the state.

History: En. Sec. 9, Ch. 148, L. 1919; re-en. Sec. 6633, R. C. M. 1921.

72-710. (6634) Liability of railroad companies not affected by law. Nothing in this act contained shall in any way affect the liability of any railroad company for damage to persons or property injured at any crossings.

History: En. Sec. 10, Ch. 148, L. 1919; re-en. Sec. 6634, R. C. M. 1921.

72-711. (6635) Penalty for failure to comply with order for construction. Any railroad company failing to construct any crossing after the order or decision requiring the construction of same has become final, within the time herein provided, or within any extension of time granted by the said board of railroad commissioners, shall, for each day's failure, pay to the state of Montana a fine of not less than ten dollars nor more than one hundred dollars, to be recovered in a civil action in the name of the state of Montana, and it shall be the duty of the county attorney of the county within which is located the site of the proposed crossing to prosecute such action.

History: En. Sec. 11, Ch. 148, L. 1919; re-en. Sec. 6635, R. C. M. 1921.

72-712. (6636) "Railroad company" defined. The words "railroad company," as herein used, shall be taken and construed to mean any corporation, person, or association of persons owning or operating a railroad.

History: En. Sec. 12, Ch. 148, L. 1919; re-en. Sec. 6636, R. C. M. 1921.

References

Knott v. Pepper, 74 M 236, 244, 239 P 1037.

## TITLE 73

## RECORDING TRANSFERS

- Chapter 1. Recording transfers—release of oil, gas and mineral leases, 73-101 to 73-116.
  - Effect of recording or failure to record conveyance of real property, 73-201 to 73-207.

## CHAPTER 1

## RECORDING TRANSFERS—RELEASE OF OIL, GAS AND MINERAL LEASES

- What may be recorded—recording certified copies in another county. Section 73-101.
  - 73-102. Judgments may be recorded without acknowledgment.
  - Recording of return of sale under decree of court. 73-103.
  - 73-104. Letters patent and other federal and state documents to be recorded without acknowledgment.
  - 73-105. Acknowledgment of instruments required, except when.
  - 73-106. Same—certified instruments recorded, when.

  - 73-107. Transfers in trust, etc.
    73-108. Fees of recorder to be endorsed.
    73-109. Registration of ranch owners.
  - 73-109. Registration of ranch owners.
  - 73-110. In what office.
  - 73-111. Instrument—when deemed recorded.
  - 73-112. Books of record.
  - 73-113. Duties of recorder.
  - Oil, gas and mineral leases, release of record of. 73-114.
  - 73-115. Action to compel release—damages—attorney's fees—release without
  - 73-116. Demand for release—when and upon whom to be made.

73-101. (6890) What may be recorded—recording certified copies in another county. Any instrument or judgment, affecting the title to or possession of real property, may be recorded under this chapter. When any instrument or judgment, affecting the title to or possession of real property, situated in more than one county in this state, has been recorded in either of such counties, a copy thereof, certified to by the county clerk of the county in which it has been recorded, may be recorded in any other county in this state wherein any portion of the real property affected by such instrument or judgment is situated, and such records will have the same effect as if the original instrument or judgment had been so recorded.

History: Earlier laws regulating the execution and recording of conveyances of realty were Ch. 18, pp. 395 to 404, Cod. Stat. 1871; re-en. Secs. 178-299, Rev. Stat. 1879, and as Secs. 235-287, 5th Div. Comp. Stat. 1887.

This section en. Sec. 1570, Civ. C. 1895; re-en. Sec. 4643, Rev. C. 1907; amd. Sec. 1, Ch. 28, L. 1919; re-en. Sec. 6890, R. C. M. 1921. Cal. Civ. C. Sec. 1158. Field Civ. C. Sec. 508.

#### Cross-References

County clerk's duties, secs. 16-2901 to 16-2925.

Offering forged instruments for record, penalty, sec. 94-2724.

## Certificate of Sale

A certificate of sale issued by the sheriff is a conveyance within the meaning of the Recording Act. Lepper v. Home Ranch Co., 90 M 558, 565, 4 P 2d 722.

#### References

Citizens Nat. Bank v. Western L. & B. Co., 64 M 40, 208 P 893; Bozdech v. Montana Ranches Co., 67 M 366, 216 P 319; Standard Oil Co. v. Idaho Community Oil Co., 98 M 131, 37 P 2d 660; Cullen v. Reed, 220 Fed 356, 357.

#### Collateral References

Judgment@277-293 and other particular topics; Records 1, 6.

49 C.J.S. Judgments § 122 et seq.; 76

C.J.S. Records §§ 1, 10.
45 Am. Jur. 434, Records and Recording Laws, §§ 28 et seq.

Solid mineral royalty as real or personal property for recording purposes. 68 ALR

73-102. (6891) Judgments may be recorded without acknowledgment. Judgments affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which such judgments were rendered, may be recorded without acknowledgment or further proof.

History: En. Sec. 1571, Civ. C. 1895; re-en. Sec. 4644, Rev. C. 1907; re-en. Sec. 6891, R. C. M. 1921. Cal. Civ. C. Sec. 1159. Collateral References

45 Am. Jur. 445, Records and Recording Laws, § 44.

73-103. (6891.1) Recording of return of sale under decree of court. Where real estate is sold under a decree of court, return of such sale shall be made, and filed in the office of the clerk of court. The clerk shall record the return so made, the same as if it were to an execution wherein a levy upon real estate had been made; provided, that where the return contains a true copy of the decree of court under which such sale was made, the clerk shall record all of the return except such copy of the decree, and in lieu of recording such copy, shall insert in the record the following:

"The original judgment and decree, the true copy which is set forth in this return, is recorded in judgment book....., at pages....., to....., inclusive, thereof."

History: En. Sec. 1, Ch. 42, L. 1927.

#### Collateral References

Judicial Sales 30 and other particular topics. 50 C.J.S. Judicial Sales § 24.

73-104. (6892) Letters patent and other federal and state documents to be recorded without acknowledgment. Letters patent from the United States, or from the state of Montana, or other documents and instruments or duly certified copies thereof issued by or pursuant to the authority of the United States, or the state of Montana, which evidence title to land or affect the title thereof, executed and authenticated pursuant to existing law, may be recorded without acknowledgment or further proof; and where letters patent have been lost, or are beyond the control of any party deraigning title therefrom, or for any reason they remain unrecorded, any person claiming title thereunder may cause a transcript of the copy of such letters patent kept by the government issuing the same, duly certified by the officer or individual having lawful custody of such copy, to be recorded in lieu of the original; and such recorded copy shall have prima facie the same force and effect as the original, for title or for evidence, until the said original letters patent be recorded.

History: En. Sec. 1572, Civ. C. 1895; re-en. Sec. 4645, Rev. C. 1907; re-en. Sec. 6892, R. C. M. 1921; amd. Sec. 1, Ch. 148, L. 1957. Cal. Civ. C. Sec. 1160.

Collateral References Public Lands = 112, 1581/2. 73 C.J.S. Public Lands §§ 192, 253. 73-105. (6893) Acknowledgment of instruments required, except when. Before an instrument can be recorded, unless it belongs to the class provided for in either sections 73-102, 73-104, 39-124 or 39-125, its execution must be acknowledged by the person executing it, or, if executed by a corporation, by its president, vice-president, secretary, or assistant secretary, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, or proved by a subscribing witness, or as provided in sections 39-120 and 39-121, and the acknowledgment or proof certified in the manner prescribed by sections 39-101 to 39-130.

History: En. Sec. 1573, Civ. C. 1895; re-en. Sec. 4646, Rev. C. 1907; re-en. Sec. 6893, R. C. M. 1921; amd. Sec. 1, Ch. 16, L. 1931; amd. Sec. 1, Ch. 170, L. 1937. Cal. Civ. C. Sec. 1161. Based on Field Civ. C. Sec. 509.

### Bill of Sale

A bill of sale conveying an interest in land which was not acknowledged or proved was not entitled to record under this section, and therefore its record imparted no constructive notice to anyone. Baum v. Northern Pacific Ry. Co., 55 M 219, 222, 175 P 872.

### Constructive Notice

To entitle an instrument to be recorded under this section, it must be acknowledged by the party who is bound by it to the performance of an act, acknowledgment by the party to whom he is bound being of no avail, and record of it in the latter case imparts no constructive notice whatever. Lee v. Laughery, 55 M 238, 244, 175 P 873.

In order that the record of an instrument shall impart constructive notice, the writing must be one which the law authorizes to be recorded. Lee v. Laughery, 55 M 238, 244, 175 P 873.

For record of instrument to impart "constructive notice," the writing must be one

which the law authorizes to be recorded and not one that is illegally placed of record in violation of the express mandate of statute. Epletveit v. Solberg, 119 M 45, 169 P 2d 722, 728.

### Grazing Lease

A grazing lease which was not acknowledged or proved as required by this section was not entitled to be recorded and it imparted no constructive notice to anyone. Epletveit v. Solberg, 119 M 45, 169 P 2d 722, 728.

### References

Standard Oil Co. v. Idaho Community Oil Co., 98 M 131, 37 P 2d 660; Letz v. Letz, 123 M 494, 215 P 2d 534; Hughes v. Melby, 135 M 415, 426, 340 P 2d 511.

### Collateral References

Acknowledgment 1-4.

1 C.J.S. Acknowledgments §§ 1-6, 9, 10, 13-16.

45 Am. Jur. 452, Records and Recording Laws, § 60.

Sufficiency of certificate of acknowledgment, 25 ALR 2d 1124.

Record of instrument without or having insufficient acknowledgment as notice, 59 ALR 2d 1299.

73-106. (6894) Same—certified instruments recorded, when. An instrument, proved and certified pursuant to sections 39-120 and 39-121, may be recorded in the proper office if the original is at the same time deposited therein to remain for public inspection, but not otherwise.

History: En. Sec. 1574, Civ. C. 1895; 6894, R. C. M. 1921. Cal. Civ. C. Sec. 1162. re-en. Sec. 4647, Rev. C. 1907; re-en. Sec. Field Civ. C. Sec. 510.

73-107. (6895) Transfers in trust, etc. Transfers of property in trust for the benefit of creditors, and transfers or liens on property by way of mortgage, are required to be recorded in the cases specified in the chapters on the special relation of debtor and creditor, and the chapter on mortgages, respectively.

History: En. Sec. 1575, Civ. C. 1895; 6895, R. C. M. 1921. Cal. Civ. C. Sec. 1164. re-en. Sec. 4648, Rev. C. 1907; re-en. Sec. Field Civ. C. Sec. 511.

Cross-Reference

Recording of mortgages, sec. 52-205.

Collateral References

Assignments for Benefit of Creditors 163; Mortgages 90.

6 C.J.S. Assignments for Benefit of Creditors § 118; 59 C.J.S. Mortgages § 202. 45 Am. Jur. 442, Records and Recording Laws, §§ 40, 41.

73-108. (6896) Fees of recorder to be endorsed. The county clerk must, in all cases, endorse the amount of his fee for recording on the instrument recorded.

History: En. Sec. 1576, Civ. C. 1895; re-en. Sec. 4649, Rev. C. 1907; re-en. Sec. 6896, R. C. M. 1921. Cal. Civ. C. Sec. 1165.

Collateral References Records \$\infty\$=6. 76 C.J.S. Records § 9.

73-109. (6897) Registration of ranch owners. The owner of any farm or ranch in the state of Montana may, upon the payment of one dollar to the county clerk and recorder in the county in which the farm or ranch may be situated, have the name of such farm or ranch entered and recorded in a register, which the county clerk and recorder shall keep for such purpose, and thereupon such owner shall be, by said clerk and recorder, furnished a certificate issued under the seal of said official, setting forth therein the name and location of the farm or ranch, and the name of such owner; provided, that when any name shall have been recorded as hereinbefore provided, any other person or persons shall not have the right to use the same name for any other farm or ranch in the same county, except by prefixing or adding thereto designating or other identifying words.

History: En. Sec. 1, Ch. 49, L. 1913; re-en. Sec. 6897, R. C. M. 1921.

### Collateral References

Trade-Marks and Trade-Names and Unfair Competition \$\infty\$43.

87 C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 130.

**73-110.** (6898) **In what office.** Instruments entitled to be recorded must be recorded by the county clerk of the county in which the real property affected thereby is situated.

History: En. Sec. 1590, Civ. C. 1895; 6898, R. C. M. 1921, Cal. Civ. C. Sec. 1169. re-en. Sec. 4650, Rev. C. 1907; re-en. Sec. Based on Field Civ. C. Sec. 512.

73-111. (6899) Instrument—when deemed recorded. An instrument is deemed to be recorded when, being duly acknowledged or proved and certified, it is deposited in the county clerk's office with the proper officer for record.

History: En. Sec. 1591, Civ. C. 1895; re-en. Sec. 4651, Rev. C. 1907; re-en. Sec. 6899, R. C. M. 1921. Cal. Civ. C. Sec. 1170. Based on Field Civ. C. Sec. 513.

### Law Review

Cromwell, "The Improvement of Conveyancing in Montana—A Proposal," 22 Mont. L. Rev. 26, 35 (Fall 1960).

## References

Guerin v. Sunburst Oil & Gas Co., 68 M 365, 370, 218 P 949.

73-112. (6900) Books of record. Grants, absolute in terms, are to be recorded in one set of books, and mortgages, and securities in the nature of mortgages, in another.

History: En. Sec. 1592, Civ. C. 1895; re-en. Sec. 4652, Rev. C. 1907; re-en. Sec. 6900, R. C. M. 1921. Cal. Civ. C. Sec. 1171. **73-113.** (6901) **Duties of recorder.** The duties of county clerks, in respect to recording instruments, are prescribed by sections 16-2901 to 16-2925.

History: En. Sec. 1593, Civ. C. 1895; 6901, R. C. M. 1921. Cal. Civ. C. Sec. 1172. re-en. Sec. 4653, Rev. C. 1907; re-en. Sec. Based on Field Civ. C. Sec. 514.

73-114. (6902) Oil, gas and mineral leases, release of record of. When any oil, gas, or other mineral lease heretofore or hereafter executed shall become forfeited, it shall be the duty of the lessee, his successor or assigns, within sixty days from the date this act shall take effect, if the forfeiture occurred prior thereto, and within sixty days from the date of the forfeiture of any and all leases, to have such lease released from record in the county where the leased land is situated without cost to the owner thereof.

History: En. Sec. 1, Ch. 22, L. 1917; re-en. Sec. 6902, R. C. M. 1921.

### Abatement of Action

Although plaintiff's land was sold on foreclosure sale after his action for damages brought under sections 73-114 to 73-116, was commenced, the period of redemption having expired prior to retrial of the cause, it did not result in the abatement of the action under section 93-2824 (since repealed). Solberg v. Sunburst Oil & Gas Co., 76 M 254, 276, 246 P 168.

## Action for Cancellation

Where the lessor of oil and gas lands, after making demand for cancellation of the lease required by section 73-116, conveyed title by warranty deed to another, both thereafter had a remedial interest in the cause of action for cancellation of the lease, and they having joined as plaintiffs in the action commenced after passing of title, failure of the grantee to make demand upon the lessee to clear the record of the instrument prior to action did not destroy their right to maintain it, demand by the lessor having been sufficient to meet the requirement of the section. Abell v. Bishop, 86 M 478, 489 et seq., 284 P 525.

Lessor who intends to claim forfeiture, where development is an element, has the duty to demand that development proceed or commence. Braun v. Mon-O-Co Oil Corp., 133 M 101, 320 P 2d 366.

### Construction

An oil and gas lease should be construed strictly against the lessee and in favor of the lessor. Daley v. Torrey, 69 M 599, 601, 223 P 498.

### Damages

To warrant recovery of special damages, i.e., such damages as are the natural but not the necessary result of defendant's wrongful act, they must be pleaded. Solberg v. Sunburst Oil & Gas Co., 73 M 94, 101 et seq., 235 P 761.

Under his general allegation of damages plaintiff in an action to compel the release of record of an oil and gas lease after an alleged forfeiture under its terms, proof that because of defendant's failure to make release plaintiff had been prevented to make a new lease to his damage (special in character) in a given amount was inadmissible for that purpose, but admissible to show the nominal damages recoverable under section 73-115. Solberg v. Sunburst Oil & Gas Co., 73 M 94, 101 et seq., 235 P 761.

### Definition of Forfeiture

The word "forfeiture" as used in the statute making it the duty of the lessee of oil and gas lands to cause the lease to be released of record within sixty days after forfeiture (73-114 to 73-116) means the deprivation of the right of the lessee to further remain in the possession under the lease in consequence of a nonperformance of an obligation or condition resting upon him thereunder. Steven v. Potlatch Oil & Refining Co., 80 M 239, 249, 260 P 119.

### Drilling Operations

In an action to have an oil and gas lease forfeited for failure of the lessee to "commence drilling operations for oil" within the time specified in the lease, held that the quoted phrase meant the commencement of actual drilling and not the commencement of preliminary work necessary to such drilling; that evidence that the well was not "spudded in" was sufficient to make out a prima-facie case, and that therefore the granting of a nonsuit was error. Solberg v. Sunburst Oil & Gas Co., 73 M 94, 101 et seq., 235 P 761.

### Implied Covenant to Drill Offset Wells

Where plaintiffs alleged failure to drill offset wells for the protection of the leased acreage, in an action for cancellation of a gas lease thus breaching the implied covenant to drill such wells, held, in view of no market for the gas produced, the

drilling would have been useless act and not a breach of contract. Severson v. Barstow, 103 M 526, 532, 63 P 2d 1022.

### Implied Covenant to Find Market

Where the principal consideration for a lease on oil or gas lands is the payment of royalty, the lease, silent on the subject, carries an implied covenant to use reasonable diligence to market the product. Severson v. Barstow, 103 M 526, 532, 63 P 2d 1022.

### Limitation of Action

An action for the cancellation of record of an oil and gas lease which had theretofore been declared forfeited, brought under sections 73-114 to 73-116, held not an action "upon a statute for a penalty or forfeiture" within the meaning of section 93-2606, prescribing that such an action must be brought within two years, nor one "upon a liability created by statute other than a penalty or forfeiture" for which a like limitation is prescribed by section 93-2607. Abell v. Bishop, 86 M 478, 489 et seq., 284 P 525.

A statute which gives a right that existed prior thereto and merely increases the damages by adding a penalty, as do sections 73-114 to 73-116, which grant the right to maintain an action to clear title from a cloud created by a recorded oil and gas lease, valid on its face but void or voidable as to plaintiff lessor's title, being remediable in character, is not a penalty statute within the meaning of the statute of limitations. Abell v. Bishop, 86 M 478, 489 et seq., 284 P 525.

### Nature of Action

An action to compel the release of an oil and gas lease of record on the ground that the lessee had failed to commence drilling operations within the time fixed in the lease, by reason of which it became forfeited, and for the recovery of the statutory penalty, damages and attorney's fees (73-114 to 73-116), is one at law, entitling plaintiff to a jury trial. Solberg v. Sunburst Oil & Gas Co., 70 M 177, 180, 225 P 612.

An action for the cancellation of an oil and gas lease, for recovery of damages and the statutory penalty for failure to release, brought under sections 73-114 to 73-116, is one at law, even though incidentally it calls for equitable relief. Berthelote v. Loy Oil Co., 95 M 434, 446, 28 P 2d 187; Stranahan v. Independent Nat. Gas Co., 98 M 597, 41 P 2d 39.

## Object of Action to Clear Record of Forfeited Lease

The primary object of an action brought under sections 73-114 to 73-116, is to clear the record of the cloud on title to oil and gas lands cast thereon by a forfeited lease, not to recover the penalty therein provided for; therefore where the court decreed cancellation of a lease but did not award the penalty, appellant lessor's contention that primary relief, to wit, the penalty having been refused, the incidental relief—cancellation—was improper, has no merit. Abell v. Bishop, 86 M 478, 489 et seq., 284 P 525.

## Operations after Forfeiture

After forfeiture of an oil and gas lease has been declared and demand made for its return for nonperformance of the condition to commence drilling operations within a given time, it is immaterial that the lessee thereafter commenced drilling, and the lessee's failure to release the lease of record within sixty days entitles the lessor to prosecute his action under sections 73-114 to 73-116. Solberg v. Sunburst Oil & Gas Co., 76 M 254, 259 et seq., 246 P 168.

### Time for Making Release

This section provides that when an oil and gas lease shall become forfeited it is the duty of the lessee to record the re-lease thereof within sixty days from the date of forfeiture; section 73-116 provides that the lessor must at least twenty days before bringing the action given him by section 73-115 to enforce release, demand such release of record. Held, that after forfeiture the lessor is not required to wait sixty days before making demand but may do so at any time, provided suit is not commenced before the expiration of the sixty-day period during which it is the duty of the lessee to make release. Steven v. Potlatch Oil & Refining Co., 80 M 239, 249, 260 P 119.

## Written Notice Not Required

The lessor of oil and gas rights is not required to give written notice of his intention to declare a forfeiture of the lease for failure of the lessee to commence drilling operations within the time stipulated, to entitle him to prevail in an action brought under sections 73-114 to 73-116, for damages for failure to clear the record of the forfeited lease. Solberg v. Sunburst Oil & Gas Co., 76 M 254, 259 et seq., 246 P 168.

### Written Portion Controlling

In an action to enforce the cancellation of an oil and gas lease and to recover damages for refusal to cancel (73-114 to 73-116), a written paragraph therein, providing that in the event a well was not commenced within the time limit mentioned in the lease, the instrument should be null and void, was controlling as against a printed one under which, if the operations were not commenced within

that time the lessor should pay two dollars per acre for each additional year commencement of drilling was delayed, and demurrer to the complaint was improperly sustained. Daley v. Torrey, 69 M 599, 601, 223 P 498.

#### References

Corey v. Sunburst Oil & Gas Co., 72 M

383, 394, 233 P 909; Williard v. Federal Surety Co., 91 M 465, 472, 8 P 2d 633; Stumpf v. Fidelity Gas Co., 294 F 2d 886, 891.

### Collateral References

Mines and Minerals 70(4), 78(6). 58 C.J.S. Mines and Minerals §§ 190, 205.

73-115. (6903) Action to compel release—damages—attorney's fees—release without suit. Should the owner of such lease neglect or refuse to execute a release as provided by this act, then the owner of the leased premises may sue in any court of competent jurisdiction to obtain such release, and he may also recover in such action of the lessee, his successor or assigns, the sum of one hundred dollars (\$100.00) as damages, and all costs, together with a reasonable attorney's fee for preparing and prosecuting the suit, and he may also recover any additional damages that the evidence in the case will warrant. In all such actions writs of attachment may issue as in other cases. If, in such action, the plaintiff fails to establish the forfeiture of the lease, an attorney's fee must be allowed to the holder of the lease. Issues in regard to such fees shall be determined in the same manner as other issues in such actions.

When, by its terms, any such oil and/or gas lease has expired and is subject to forfeiture for nonperformance and more than three (3) years has elapsed since said expiration, the owner of the leased premises may, in addition to all other remedies, serve a written notice on said lessee or on the assignee thereof, which notice shall state the name of the lessor, the lessee, and the assignee thereof if assigned; the date of the lease; the date of the expiration thereof; description of the lands leased; the place, book and page where recorded; and shall state that unless said lease is released of record, or the lessee or the assignee thereof shall, within sixty (60) days from the date of service thereof, file an affidavit in the county elerk's office in the county wherein such lease is recorded and deliver a copy thereof to the owner of the leased lands stating that said lease is in effect, otherwise, said lease shall be terminated and of no effect and shall cease to be a lien upon the lands described therein.

If the lessee or the assignee thereof resides in the county where said lease is recorded, the notice shall be personally served on said person or persons. If said lessee or the assignee thereof does not reside in said county, but his, her or its address appears on the records in that county clerk's office, or is otherwise known, such notice shall be mailed by registered mail to such person, or persons, at such address, and in addition thereto, such notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the county in which said lands are situated, and said notice shall likewise be published in the manner as above provided if the address of the lessee or assignee is unknown. The date of service of said notice, if served personally; the date of mailing, if served by mail; and the first date of publication of said notice, if published, must be at least sixty (60) days before the date of termination referred to in said notice. Upon the expiration of the time mentioned in said notice,

if the affidavit of the lessee or assignee has not been filed as herein provided, the owner of the leased lands shall file an affidavit of service thereof in the county clerk's office of said county and the affidavit shall be kept as a permanent file in his office, and such proof of notice when so filed shall be prima-facie evidence of the sufficiency of the notice, and from and after the filing thereof said lease shall be terminated and the lands released from the lien thereof.

History: En. Sec. 2, Ch. 22, L. 1917; re-en. Sec. 6903, R. C. M. 1921; amd. Sec. 1, Ch. 18, L. 1929; amd. Sec. 1, Ch. 146, L. 1947.

## Action One at Law-Equitable Principles Apply

Under the facts presented, it was held to be an equitable adjustment in action to cancel lease for failure to drill or market, to cancel the lease as to three 40-acre tracts on which no drilling was done, leaving a 40-acre tract to lessee on which producing well was located, enabling both parties to derive benefit from an expected gas market. Severson v. Barstow, 103 M 526, 533, 63 P 2d 1022.

## Attorney's Fees

Where both lessor and lessee secured a portion of the relief they sought in action for cancellation of gas lease, neither party should be required to pay the other's attorney's fees. Severson v. Barstow, 103 M 526, 535, 63 P 2d 1022.

### Burden to Prove Diligence to Find Market

In an action under sections 73-114 to 73-116 to cancel gas lease for failure to find market for gas produced, burden is upon lessee to establish fact that he used reasonable diligence in trying to find a market. Severson v. Barstow, 103 M 526, 532, 63 P 2d 1022.

## Court May Value Attorneys' Fees without Evidence

Since this statute authorizes recovery of attorneys' fees as of course, the trial court may act upon its own knowledge concerning value of attorneys' services and award fee without taking evidence. Stanolind Oil & Gas Co. v. Guertzgen, 100 F 2d 299, 302.

### References

Stumpf v. Fidelity Gas Co., 294 F 2d 886, 891.

## Collateral References

Mines and Minerals 70(6), 78(7). 58 C.J.S. Mines and Minerals §§ 192, 208.

73-116. (6904) Demand for release—when and upon whom to be made. At least twenty days before bringing the action provided for in this act, the owner of the leased land, either by himself or by his agent or attorney, shall demand of the holder of the lease (if such demand by ordinary diligence can be made in this state) that said lease be released of record. Such demand must be written. When written, a letterpress or carbon or written copy thereof, when shown to be such, may be used as evidence in any court with the same force and effect as the original.

History: En. Sec. 3, Ch. 22, L. 1917; re-en. Sec. 6904, R. C. M. 1921.

### References

Stumpf v. Fidelity Gas Co., 294 F 2d 886, 891.

## Collateral References

Mines and Minerals  $\bigcirc$  70(4), 78(6). 58 C.J.S. Mines and Minerals §§ 190, 204.

### CHAPTER 2

## EFFECT OF RECORDING OR FAILURE TO RECORD CONVEYANCE OF REAL PROPERTY

Section 73-201. Record—to whom notice—recording copies.

73-202. Conveyances to be recorded, or are void, etc.

73-203. Conveyances defined.
73-204. Powers of attorney—how revoked.
73-205. Unrecorded instruments valid between the parties.

73-206. Designation of grantee in conveyance of real estate as trustee when terms of trust not set forth—effect of.

73-207. Validation of conveyances recorded after defective execution.

73-201. (6934) Record—to whom notice—recording copies. Every conveyance of real property acknowledged or proved, and certified and recorded as prescribed by law, from the time it is filed with the county clerk for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees; and a certified copy of any such recorded conveyance may be recorded in any other county, and when so recorded the record thereof shall have the same force and effect as though it was of the original conveyance.

History: Ap. p. Sec. 259, 5th Div. Comp. Stat. 1887; re-en. Sec. 1640, Civ. C. 1895; re-en. Sec. 4683, Rev. C. 1907; amd. Sec. 1, Ch. 33, L. 1921; re-en. Sec. 6934, R. C. M. 1921. Cal. Civ. C. Secs. 1213, 1218.

### Constructive Notice to Whom

The record of an instrument is constructive notice to subsequent purchasers and encumbrancers only, and does not affect a prior purchaser though he has not acquired the legal title nor made full payment of the purchase price. Piccolo v. Tanaka, 78 M 445, 451, 253 P 890.

### Description of the Property

In order to give a mortgagee priority as against a subsequent purchaser or mortgagee, the mortgage must describe the land covered by it with sufficient accuracy to enable one examining the record to identify the land. Ely v. Hoida, 70 M 542, 547, 226 P 525.

## Effect of Actual Knowledge though Unrecorded

One who takes a mortgage upon property with actual knowledge of an earlier, though unrecorded, one, takes it subject thereto and will not be permitted, by placing his mortgage first on record, to gain priority over the earlier lien, even though the prior instrument is imperfect in itself or is defectively executed. Angus v. Mariner, 85 M 365, 373, 278 P 996.

### Effect of Recording

The record of the assignment of a mortgage is notice to a purchaser from the mortgagor, so that payments by him to the assignor are at his own risk. Cornish v. Woolverton, 32 M 456, 477, 81 P 4.

Where the deed under which one holds lands is of record and the grantee takes possession, such possession is referable to such deed, and a subsequent purchaser is relieved from further inquiry to ascertain whether any other or different claim is asserted. Baum v. Northern Pacific Ry. Co., 55 M 219, 222, 175 P 872.

### Form of Instrument

Under this section and sections 73-202 and 39-115, a certificate of acknowledgment of a mortgage by husband and wife is not rendered insufficient to charge a subsequent purchaser with notice by reason of the fact that, in the statement that the parties "severally acknowledged—he— executed the same," the blanks before and after the word "he" were not filled so as to make the word "they." Trerise v. Bottego, 32 M 244, 247, 79 P 1057.

### Fraud-Constructive Notice No Defense

It does not lie in the mouth of the mortgagor who made a fraudulent representation to the mortgagee that the property was unencumbered to assert that the defrauded mortgagee should not be heard to complain since he was chargeable with notice that the records disclosed the true state of facts. Under section 49-109, he cannot take advantage of his own wrong. However, plaintiff is chargeable with constructive notice as against first mortgagee. Bailey v. Hansen, 105 M 552, 561, 74 P 2d 438.

### Oral Agreements

Oral agreements affecting the title to real property, being incapable of record, are not within the express language of this section and section 73-202. Mullins v. Butte Hardware Co., 25 M 525, 538, 65 P 1004.

## Reservation of Royalty

Where plaintiff, seeking to quiet title, held premises under quitclaim deed from prior owner, he took title subject to all prior recordations or conveyances concerning the land in question, including reservation of royalty appearing on face of prior conveyances. Pluhar v. Gudejahn, 134 M 46, 328 P 2d 129, 132.

## What Knowledge Is Presumed from a Record

Where, after giving an oil and gas lease upon his land to one party which lease

was not recorded, the owner gave an option to purchase the land to another party subject to the lease, the option being recorded, plaintiff who purchased the land before the expiration of the option, was chargeable with constructive notice of the option and its contents and hence of the provision therein that it was subject to the lease, and, in the absence of inquiry from the lessee, was not an innocent purchaser without notice and therefore not entitled to an injunction to prevent the lessee from going upon the land for the purpose of exploration. Guerin v. Sunburst Oil & Gas Co., 68 M 365, 368 et seq., 218 P 949, distinguished in 70 M 542, 549, 226 P 525.

### References

Baker v. Bartlett, 18 M 446, 45 P 1084; Morrison v. Farmers' & Traders' State Bank, 70 M 146, 149, 152, 225 P 123; O. M. Corwin Co. v. Brainard, 80 M 318, 324, 260 P 706; Short v. Karnop, 84 M 276, 279 et seq., 275 P 278; Mussellshell Valley F. & L. Co. v. Cooley, 86 M 276, 283 P 213; Standard Oil Co. v. Idaho Community Oil Co., 98 M 131, 37 P 2d 660; Hughes v. Melby, 135 M 415, 340 P 2d 511, 520; Cullen v. Reed, 220 Fed 356, 357.

### Collateral References

Mortgages ≈ 154(4), 171; Vendor and Purchaser ≈ 231.

59 C.J.S. Mortgages §§ 239, 255; 92 C.J.S. Vendor and Purchaser § 334 et seq. 45 Am. Jur. 464, Records and Recording Laws, §§ 81 et seq.

Record of instrument which comprises or includes an interest or right that is not a proper subject of record. 3 ALR 2d 577.

Rights as between purchaser of timber under unrecorded instrument and subsequent vendee of land. 18 ALR 2d 1162.

Personal covenant in recorded deed as enforceable against grantee's lessee or successor. 23 ALR 2d 520.

Necessity that mortgage covering oil and gas lease be recorded as real estate mortgage, and/or filed or recorded as chattel mortgage. 34 ALR 2d 902.

Public records as notice of adverse possession in life tenant as against remaindermen or reversioners. 58 ALR 2d 309.

Record of instrument without sufficient acknowledgment as notice. 59 ALR 2d 1299.

### Law Review

Cromwell, "The Improvement of Conveyancing in Montana—A Proposal," 22 Mont. L. Rev. 26, 32 (Fall 1960).

73-202. (6935) Conveyances to be recorded, or are void, etc. Every conveyance of real property, other than a lease for a term not exceeding one year, is void against any subsequent purchaser or encumbrancer, including an assignee of a mortgage, lease, or other conditional estate, of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.

History: Ap. p. Sec. 260, 5th Div. Comp. Stat. 1887; re-en. Sec. 1641, Civ. C. 1895; re-en. Sec. 4684, Rev. C. 1907; re-en. Sec. 6935, R. C. M. 1921. Cal. Civ. C. Sec. 1214. Based on Field Civ. C. Sec. 530.

### Definition of "Encumbrancer"

This section does not operate in favor of an attaching creditor as against a contract of sale and the assignment thereof not recorded prior to levy of the attachment, the term "encumbrancer" not being broad enough to include such creditor. Short v. Karnop, 84 M 276, 278 et seq., 275 P 278; Stauffacher v. Great Falls Public Service Co., 99 M 324, 43 P 2d 647.

## Donee Not Good Faith Purchaser

Where a son receives property from his father as a gift, he cannot be considered a good faith purchaser for a valuable consideration within the meaning of this section. Hughes v. Melby, 135 M 415, 340 P 2d 511.

### Effect of Recording in General

This section unequivocally makes all unrecorded deeds and conveyances, except leases for one year, void as to subsequent purchasers and encumbrancers in good faith and for a valuable consideration. Sheldon v. Powell, 31 M 249, 254, 78 P 491.

Under this section it is presumed that the holder of the prior recorded title acquired the entire estate, unless he had, or was charged with, notice. Custer Consolidated Mines Co. v. City of Helena, 52 M 35, 40, 156 P 1090.

A real estate mortgage extension agreement executed under section 52-203, before maturity of the last of a series of mortgage notes, was not recorded until after the period of extension had expired. Two years prior thereto the property had been conveyed to another, subject to the mortgage, the deed, however, not being recorded until some six weeks after recordation of the agreement. Held, in an action

for foreclosure of the mortgage that the extension agreement, having been valid and first placed of record, took priority over the deed, under this section, even assuming that the vendee was a subsequent purchaser in good faith and for a valuable consideration. Hastings v. Wise, 91 M 430, 435, 8 P 2d 636.

### Estoppel to Record Gift Deed

Where the father executed a deed of a one-third interest in his ranch to his son as a gift but did not record or deliver such deed, then placed the ranch with a real estate broker with the power to sell, the broker and his purchaser could rely on the record ownership, and both the son and his father were estopped to defeat them by a recordation subsequent to the contract of purchase. Hughes v. Melby, 135 M 415, 340 P 2d 511.

## General Requisites

To entitle a subsequent purchaser of real property to protection against prior conveyances under this section, he must not only have purchased for a valuable consideration, but his conveyance must have been first duly recorded. Hastings v. Wise, 91 M 430, 435, 8 P 2d 636.

## Knowledge of Royalty Assignments in Subsequent Leaseholder

Where the holder of a federal oil and prospecting permit assigned a number of royalty interests in the lands covered by it, which assignments were duly recorded, and he thereafter transferred the permit to another who secured leases on the lands, the latter took the leases subject to and with knowledge of the assignments of royalty interests, under this recording statute. Aronow v. Bishop, 107 M 317, 325, 86 P 2d 644.

### "Other Conditional Estate"

Under the rule of statutory construction of ejustem generis, held, that the words "other conditional estate" used in the provision of this section, declaring an unrecorded instrument void as against "subsequent purchasers and encumbrancers, including an assignee of a mortgage, lease or other conditional estate," means such estates of the nature previously mentioned in the statute, i.e., estates created by the owner of the property, or by assignment thereof. Short v. Karnop, 84 M 276, 278 et seq., 275 P 278.

## When Support of Indigent Parents Not Sufficient Consideration

While an existing legal obligation, such as rests upon children to support their indigent parents to the extent of their ability, under sections 61-114 and 61-124 is a good consideration for a promise under

section 13-502, "to an extent corresponding with the extent of the obligation, but no further or otherwise," that is not to say that it is such a consideration as to make defendant a purchaser in good faith and for a valuable consideration, so as to entitle him to plaintiff's property under this section. Kelly v. Grainey, 113 M 520, 534, 129 P 2d 619.

# Where Recording Not Substitute for Actual Notice to Change Permissive Possession to Hostile

Although the recording of deeds to supply additional security for bank loan to sister of plaintiff would have constituted such notice as would protect a bona fide purchaser for a valuable consideration whose deed had been recorded first under this section, it could not take the place of actual notice to the owner of the property, involved in a quiet title action in which the defendant, another sister of plaintiff, relied upon the doctrine of adverse possession of her grantor, that the permissive nature of the possession had been changed into a hostile one. Kelly v. Grainey, 113 M 520, 530, 129 P 2d 619.

## Who Is an Innocent Purchaser in ${\bf Good}$ Faith

Where plaintiff in an action in unlawful detainer, before purchasing land had consulted the records and found that the then occupant was holding under a lease which had expired, and upon inquiry was informed by the latter that he was so holding and paying rent annually, he was a purchaser in good faith and without notice of defendant's claim as a life tenant under a letter from the owner to defendant that he could remain in possession so long as he used the premises for a certain purpose and paid the rent. Stoltze Land Co. v. Westberg, 63 M 38, 45, 206 P 407.

Where, after giving an oil and gas lease upon his land to one party which lease was not recorded, the owner gave an option to purchase the land to another party subject to the lease, the option being recorded, plaintiff who purchased the land before the expiration of the option, was chargeable with constructive notice of the option and its contents and hence of the provision therein that it was subject to the lease, and, in the absence of inquiry from the lessee, was not an innocent purchaser without notice and therefore not entitled to an injunction to prevent the lessee from going upon the land for the purpose of exploration. Guerin v. Sunburst Oil & Gas Co., 68 M 365, 368 et seq., 218 P 949, distinguished in 70 M 542, 549, 226 P 525.

In an action to quiet title to real property held that where a former owner of the property had no interest in the property at the time an attachment was levied against it by his creditor, the latter took nothing thereby as against the then owner, and his contention that under this section, since prior instruments affecting the title had not been placed of record before levy of the attachment, the title of plaintiff was subject to the attachment may not be upheld, under the above rules. Short v. Karnop, 84 M 276, 278 et seq., 275 P 278.

A purchaser in good faith is one who at the time of his purchase advances a new consideration, surrenders some security, or does some other act which leaves him in a worse position if his purchase should be set aside. Kelly v. Grainey, 113 M 520, 535, 129 P 2d 619.

### References

Baker v. Bartlett, 18 M 446, 45 P 1084; Estate of Tuohy, 23 M 305, 308, 58 P 722; Mullins v. Butte Hardware Co., 25 M 525, 538, 65 P 1004; Trerise v. Bottego, 32 M 244, 248, 79 P 1057; Kersten v. Coleman, 50 M 82, 87, 144 P 1092; Piccolo v. Tanaka, 78 M 445, 451, 253 P 890; Angus v. Mariner, 85 M 365, 373, 278 P 996; Henderson v. City of Missoula, 106 M 596, 602, 79 P 2d 547, 116 ALR 1425; Aitken v. Lane, 108 M 368, 375, 92 P 2d 628; Zier v. Osten, 135 M 484, 342 P 2d 1076; Cullen v. Reed, 220 Fed 356, 357.

### Collateral References

Mortgages 2172, 244(2); Vendor and Purchaser 233 and other particular topics

59 C.J.S. Mortgages §§ 269, 366; 92 C.J.S. Vendor and Purchaser § 345.

45 Am. Jur. 502, Records and Recording Laws, §§ 140 et seq.

Record of instrument which comprises or includes an interest or right that is not a proper subject of record. 3 ALR 2d 577.

Restrictive covenant omitted on deed imposed by general plan of subdivision. 4 ALR 2d 1364.

Agreement between real estate owners restricting use of property as within contemplation of recording laws. 4 ALR 2d 1419.

73-203. (6936) Conveyances defined. The term "conveyance," as used in the two preceding sections, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or encumbered, or by which the title to real property may be affected, except wills.

History: En. Sec. 1642, Civ. C. 1895; re-en. Sec. 4685, Rev. C. 1907; re-en. Sec. 6936, R. C. M. 1921. Cal. Civ. C. Sec. 1215. Based on Field Civ. C. Sec. 531.

### Contract for Sale of Land

A contract for the sale of land is a conveyance of real property within the meaning of the law. Piccolo v. Tanaka, 78 M 445, 451, 253 P 890.

### Lease

A lease directed by the district court to be executed by an executor of certain realty belonging to his testator's estate falls within the meaning of the term "conveyance" as used in this section. Estate of Tuohy, 23 M 305, 308, 58 P 722.

### Mortgage

While a mortgage is a conveyance, it is a conveyance of only a chattel interest. Hull v. Diehl, 21 M 71, 78, 52 P 782; Mueller v. Renkes, 31 M 100, 103, 77 P 512; Cornish v. Woolverton, 32 M 456, 475, 81 P 4.

A mortgage on real property is a conveyance within the meaning of the Recording Acts. Angus v. Mariner, 85 M 365, 373, 278 P 996.

A real estate mortgage extension agreement executed as provided by section 52-203, is a "conveyance" within the meaning of this section. Hastings v. Wise, 91 M 430, 434, 8 P 2d 636.

### Purpose and Intent

The definition given to the term "conveyance" is to make plain the meaning of the provisions touching recordation, and is not designed to change the more restricted, technical meaning in which it is used in the books. Estate of Tuohy, 23 M 305, 309, 58 P 722.

### Reservation of Royalty

Reservation of royalty appearing on face of prior conveyances in plaintiff's chain of title was constructive notice to purchaser. Pluhar v. Gudejahn, 134 M 46, 328 P 2d 129, 132.

### References

Stoltze Land Co. v. Westberg, 63 M 38, 45, 206 P 407; Guerin v. Sunburst Oil & Gas Co., 68 M 365, 368 et seq., 218 P 949; Short v. Karnop, 84 M 276, 279 et seq., 275 P 278; Standard Oil Co. v. Idaho Community Oil Co., 98 M 131, 37 P 2d 660.

### Collateral References

Mortgages 154(4), 171, 172, 244(2); Vendor and Purchaser 231, 233 and other particular topics.

59 C.J.S. Mortgages §§ 239, 255, 366; 92 C.J.S. Vendor and Purchaser § 334 et

Construction and application of regulations as to filing and recording of subdivision maps or plats. 11 ALR 2d 532, 542.

73-204. (6937) Powers of attorney—how revoked. No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved, certified and recorded, in the same office in which the instrument containing the power was recorded.

History: En. Sec. 1643, Civ. C. 1895; re-en. Sec. 4686, Rev. C. 1907; re-en. Sec. 6937, R. C. M. 1921. Cal. Civ. C. Sec. 1216. Based on Field Civ. C. Sec. 532.

### Collateral References

Principal and Agent 37. 2 C.J.S. Agency § 73 et seq. 2 Am. Jur. 41, Agency, § 42.

**73-205.** (6938) Unrecorded instruments valid between the parties. An unrecorded instrument is valid as between the parties and those who have notice thereof.

History: En. Sec. 1644, Civ. C. 1895; re-en. Sec. 4687, Rev. C. 1907; re-en. Sec. 6938, R. C. M. 1921. Cal. Civ. C. Sec. 1217.

### Burden of Proof

The burden is on the grantee in an unrecorded deed to show that a subsequent purchaser had notice. Hull v. Diehl, 21 M 71, 76, 52 P 782; Mullins v. Butte Hardware Co., 25 M 525, 539, 65 P 1004; Sheldon v. Powell, 31 M 249, 257, 78 P 491; Custer Consolidated Mines Co. v. City of Helena, 52 M 35, 41, 156 P 1090; Zier v. Osten, 135 M 484, 342 P 2d 1076.

## Grazing Lease

Though unacknowledged, unrecorded grazing lease was valid as between lessor and lessee, it was not binding on one who was not a party to the lease and who had no notice thereof at time lessor contracted to sell him the land and who promptly entered into possession of the land and made improvements thereon, including plowing of almost 70 acres thereof. Epletveit v. Solberg, 119 M 45, 169 P 2d 722, 727.

Where grazing lease was unrecorded at time lessor entered into contract for sale of premises to third party, an attempted recording occurring almost nine months after the contract of sale did not constitute constructive notice. Epletveit v. Solberg, 119 M 45, 169 P 2d 722, 727.

### Payment of Taxes

Payment of taxes by the grantee in an unrecorded deed is not notice to a subsequent purchaser. Sheldon v. Powell, 31 M 249, 256, 78 P 491; Hurley v. O'Neill, 31 M 595, 599, 79 P 242.

## Real Estate Mortgage Extension Agreement

A real estate mortgage extension agreement executed as provided by section 52-203, is a conveyance within the meaning of this section, and held that a real estate mortgage extension agreement executed under section 52-203, although not recorded until after the period of extension had expired, was superior to a deed given by the mortgagors subject to the mortgage, it being declared that, as the extension agreement was recorded before Keller's deed was placed of record, it took precedence over the deed. Hastings v. Wise, 91 M 430, 8 P 2d 636.

### References

Baum v. Northern Pacific Ry. Co., 55 M 219, 222, 175 P 872; Guerin v. Sunburst Oil & Gas Co., 68 M 365, 367, 218 P 949; Angus v. Mariner, 85 M 365, 373, 278 P 996; Hastings v. Wise, 89 M 325, 341, 297 P 482; First Nat. Bank v. Gutensohn, 97 M 453, 464, 37 P 2d 555, 97 ALR 731; Aitken v. Lane, 108 M 368, 375, 92 P 2d 628; Kelly v. Grainey, 113 M 520, 526, 129 P 2d 619; Cullen v. Reed, 220 Fed 356, 357.

### Collateral References

Deeds 82; Notice 12 and other particular topics.

26 C.J.S. Deeds § 74; 66 C.J.S. Notice § 19 et seq.

73-206. Designation of grantee in conveyance of real estate as trustee when terms of trust not set forth-effect of. That any conveyance of real property hereafter placed of record in any office of any county clerk and recorder in which the name of the grantee is followed by the word "trustee," "as trustee," or some similar fiduciary term and in which no terms and conditions of such purported trust nor any limitation on the power of the grantee to convey shall be set forth so that any person dealing with such real property could learn therefrom what, if any, limitation exists upon the authority of the grantee with regard to the reconveyance or encumbrance of such property shall be considered as though such property had been conveyed to such grantee without any limitation upon his authority to reconvey or encumber as fully as though the word "trustee," "as trustee," or any equivalent fiduciary expression had not been used in connection with his name; and the use of the word "trustee" or "as trustee," or any equivalent fiduciary expression purporting a trust, contained in such conveyance shall have no force or effect in charging any purchaser or encumbrancer thereof with notice of any limitation of power on the part of the person so named as trustee to deal with such lands as his own.

History: En. Sec. 1, Ch. 64, L. 1943.

Cross-References

Bona fide purchaser not affected by implied trust, sec. 86-104.

Notice imparted by recording of trust deed, sec. 86-406.

Purchaser without notice, protection, sec. 86-113.

73-207. Validation of conveyances recorded after defective execution. Any instrument affecting real property, which was, previous to the date this act takes effect, copied into the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument or in the certificate or acknowledgment thereof, or the absence of any such certificate; and all such instruments heretofore acknowledged by the vice-president and assistant secretary of any corporation, or by either of them, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, and recorded, shall be valid and shall have the same force and effect as though acknowledged by the president or secretary; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded.

History: En. Sec. 1, Ch. 17, L. 1961.

## TITLE 74

## SALES AND EXCHANGE

Chapter 1. Sale and agreements for sale, 74-101 to 74-110.

- 2. Contract for sale of personal property, when valid—filing—seizure on default, 74-201 to 74-207.
- Rights and obligations of seller—delivery and warranty, 74:301 to 74:324.
   Rights and obligations of buyer—inspection and payment, 74:401 to 74:403.

5. Exchange, 74-501 to 74-504.

6. Retail installment sales, 74-601 to 74-612.

## CHAPTER 1

### SALE AND AGREEMENTS FOR SALE

Section 74-101. Sale defined.

74-102. Subject of sale.

74-103. Agreement for sale. 74-104. Agreement to sell.

74-105. Agreement to buy.

74-106. Agreement to sell and buy.

74-107. What may be the subject of the contract.

74-108. Agreement to sell real property.

74-109. Usual common-law covenants required by such contracts, when.

74-110. Form of such covenants.

**74-101.** (7581) **Sale defined.** Sale is a contract by which, for a pecuniary consideration, called a price, one transfers to another an interest in property.

History: En. Sec. 2310, Civ. C. 1895; re-en. Sec. 5079, Rev. C. 1907; re-en. Sec. 7581, R. C. M. 1921. Cal. Civ. C. Sec. 1721. Field Civ. C. Sec. 855.

### Cross-Reference

Auction sales, secs. 66-201 to 66-219.

### Agreement to Sell Distinguished

Where property is sold under a contract providing that title shall remain in the seller until the purchase price is paid, the transaction is not a sale within the definition given in this section. State ex rel. Malin-Yates Co. v. Justice of Peace Court, 51 M 133, 139, 149 P 709.

A sale as distinguished from an agreement to sell, is the actual transfer of title from the grantor to the grantee, an agreement to sell being a contract to be performed in the future, which, if fulfilled, results in a sale. Franzke v. Fergus County, 76 M 150, 153, 245 P 962.

## References

Ferry & Co. v. Forquer, 61 M 336, 342, 202 P 193, 29 ALR 642; Butte Floral Co. v. Reed, 65 M 138, 152, 211 P 325; Apple v. Henry, 66 M 244, 248, 213 P 444; DeMers v. O'Leary, 126 M 528, 254 P 2d 1080, 1084.

### Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 11, 92 (Fall 1959).

**74-102.** (7582) **Subject of sale.** The subject of sale must be property, the title to which can be immediately transferred from the seller to the buyer.

History: En. Sec. 2311, Civ. C. 1895; 7582, R. C. M. 1921. Cal. Civ. C. Sec. 1722. re-en. Sec. 5080, Rev. C. 1907; re-en. Sec. Field Civ. C. Sec. 856.

#### References

Ferry & Co. v. Forquer, 61 M 336, 342, 202 P 193, 29 ALR 642; Franzke v. Fergus County, 76 M 150, 153, 245 P 962.

### Collateral References

Sales \$\$ 13, 16, 17. C.J.S. Sales §§ 13, 16, 17.

## 74-103. (7583) Agreement for sale. An agreement for sale is either:

- 1. An agreement to sell:
- 2. An agreement to buy; or,
- 3. A mutual agreement to sell and buy.

History: En. Sec. 2320, Civ. C. 1895; re-en. Sec. 5081, Rev. C. 1907; re-en. Sec. 7583, R. C. M. 1921. Cal. Civ. C. Sec. 1726. Field Civ. C. Sec. 857. 469, 480, 146 P 2d 151; DeMers v. O'Leary, 126 M 528, 254 P 2d 1080, 1084.

### References

Hardenburgh v. Hardenburgh, 115 M

## Collateral References

Sales € 1, 24, 25. 77 C.J.S. Sales §§ 1, 33.

**74-104.** (7584) **Agreement to sell.** An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing.

History: En. Sec. 2321, Civ. C. 1895; re-en. Sec. 5082, Rev. C. 1907; re-en. Sec. 7584, R. C. M. 1921. Cal. Civ. C. Sec. 1727. Field Civ. C. Sec. 858.

### Passage of Title

A seller ordinarily may not sue for the purchase price of the property until title has passed to the buyer. The actual passing of a title, as between the parties to a contract of sale of personal property, depends upon the intention of the parties. DeMers v. O'Leary, 126 M 528, 254 P 2d 1080, 1084.

### Sale Distinguished

Where personalty is sold under a contract providing that title shall remain in the seller until the purchase price is paid, the transaction is a mere executory agreement of sale, accompanied by the delivery of possession to the intending purchaser, to be held by him pending payment of the purchase price, and the title remains in the vendor until payment has been made. State ex rel. Malin-Yates Co. v. Justice of Posses Court 51 M 122 128 140 P 709

of Peace Court, 51 M 133, 138, 149 P 709.

A sale as distinguished from an agreement to sell, is the actual transfer of title from the grantor to the grantee, an agreement to sell being a contract to be performed in the future, which if fulfilled, results in a sale. Franzke v. Fergus County, 76 M 150, 153, 245 P 962.

### References

Wing v. Brasher, 59 M 10, 20, 194 P 1106; Fergus Motor Co. v. Sorenson, 73 M 122, 134, 235 P 422.

**74-105.** (7585) **Agreement to buy.** An agreement to buy is a contract by which one engages to accept from another, and pay a price for the title to a certain thing.

History: En. Sec. 2322, Civ. C. 1895; re-en. Sec. 5083, Rev. C. 1907; re-en. Sec. 7585, R. C. M. 1921. Cal. Civ. C. Sec. 1728. Field Civ. C. Sec. 859.

### When Contract of Sale Not Mere Option

The vendee, in an action to recover the balance due on the purchase price, may not contend that the contract of purchase and sale was merely an option in the face of the provision that the vendor has agreed "and does hereby agree" to sell,

and the vendee "agrees to purchase from the vendor" the property described, and that the consideration, naming it, shall be paid to the vendor "at the times and in the manner following." Petitt v. F. V. H. Collins Co., 112 M 12, 17, 113 P 2d 340.

### References

Wing v. Brasher, 59 M 10, 20, 194 P 1106; Hennessy Co. v. Wagner, 69 M 46, 48, 220 P 101.

74-106. (7586) Agreement to sell and buy. An agreement to sell and buy is a contract by which one engages to transfer the title to a certain

thing to another, who engages to accept the same from him and to pay a price therefor.

History: En. Sec. 2323, Civ. C. 1895; re-en. Sec. 5084, Rev. C. 1907; re-en. Sec. 7586, R. C. M. 1921. Cal. Civ. C. Sec. 1729. Field Civ. C. Sec. 860.

## Option to Purchase

This section held not applicable to transaction based on instrument clearly granting to purchaser an option only, where purchaser did not obligate himself to accept title to property or to pay a price therefor. Northern Mining Corp. v. Cooke Mining Co., 123 F 2d 9, 13.

### Sale Distinguished

An agreement to sell and buy is preliminary to a sale, resulting in a sale only if the terms thereof are fulfilled. Wright Land & Investment Co. v. Even, 57 M 1, 186 P 681.

A sale, as distinguished from an agreement to sell, is the actual transfer of title from the grantor to the grantee, an agreement to sell being a contract to be performed in the future, which, if fulfilled,

results in a sale. Franzke v. Fergus County, 76 M 150, 153, 245 P 962.

An agreement to sell is a contract to be performed in the future; it is preliminary to a sale and not a sale; hence where the owner of an oil and gas lease agreed to sell it on condition that upon default in making deferred payments the owner should have the right to take possession of the premises, and default was made and the agreement canceled, a finding of the court in a mechanics' foreclosure suit that the defaulting purchaser was the owner of the leasehold was error. Callender v. Crossfield Oil Syndicate, 84 M 263, 271, 275 P 273.

#### References

Adlam v. McKnight, 32 M 349, 353, 80 P 613; Lehrkind v. McDonnell, 51 M 343, 350, 153 P 1012; State v. Wallin, 60 M 332, 339, 199 P 285; Petitt v. F. V. H. Collins Co., 112 M 12, 17, 113 P 2d 340; Hardenburgh v. Hardenburgh, 115 M 469, 480, 146 P 2d 151.

74-107. (7587) What may be the subject of the contract. Any property which, if in existence, might be the subject of sale, may be the subject of an agreement for sale, whether in existence or not.

History: En. Sec. 2324, Civ. C. 1895; re-en. Sec. 5085, Rev. C. 1907; re-en. Sec. 7587, R. C. M. 1921. Cal. Civ. C. Sec. 1730. Field Civ. C. Sec. 861.

Collateral References

Sales ≈ 9-14. 77 C.J.S. Sales § 13.

real property. An agreemen

74-108. (7588) Agreement to sell real property. An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property.

History: En. Sec. 2325, Civ. C. 1895; re-en. Sec. 5086, Rev. C. 1907; re-en. Sec. 7588, R. C. M. 1921. Cal. Civ. C. Sec. 1731. Based on Field Civ. C. Sec. 862.

### Cross-Reference

Lien of seller of real property, secs. 45-1101 to 45-1103.

## Collateral References

Vendor and Purchaser ≈ 149-154. 92 C.J.S. Vendor and Purchaser § 184 et seq.

55 Am. Jur. 619, Vendor and Purchaser, § 149.

74-109. (7589) Usual common-law covenants required by such contracts, when. An agreement on the part of a seller of real property to give the usual covenants, binds him to insert in the grant covenants of "seizin," "quiet enjoyment," "further assurance," "general warranty," and "against encumbrances."

History: En. Sec. 2326, Civ. C. 1895; re-en. Sec. 5087, Rev. C. 1907; re-en. Sec. 7589, R. C. M. 1921. Cal. Civ. C. Sec. 1733. Field Civ. C. Sec. 863.

## Covenant of Warranty

Where a deed to real property purports to convey the realty itself and not merely the grantor's right, title and interest in

it, the covenant of warranty that "the grantor hereby covenants that he will forever warrant and defend" the grantee's "right, title and interest in and to the said premises \* \* \* against all and every person," etc., is one of general warranty and quiet enjoyment. Green v. Baker, 66 M 568, 575, 214 P 88. **74-110.** (7590) **Form of such covenants.** The covenants mentioned in the last section must be in substance as follows:

"The party of the first part covenants with the party of the second part, that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all encumbrances; that the party of the first part and all persons acquiring any interest in the same through or for him, will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same."

History: En. Sec. 2327, Civ. C. 1895; re-en. Sec. 5088, Rev. C. 1907; re-en. Sec. 7590, R. C. M. 1921. Cal. Civ. C. Sec. 1734. Field Civ. C. Sec. 864.

### Cross-References

Covenants implied from words of grant, sec. 67-1616.

Damages for breach of covenant, secs. 17-304, 17-305.

Land sold by married person, false pretenses, sec. 94-1808.

Sale of land twice, penalty, sec. 94-1807.

## References

Green v. Baker, 66 M 568, 575, 214 P 88.

### CHAPTER 2

## CONTRACT FOR SALE OF PERSONAL PROPERTY, WHEN VALID —FILING—SEIZURE ON DEFAULT

Section 74-201. Contract for sale of personal property.

74-202. Contract to manufacture.

74-203. Contract for sale of real property.

74-204. Filing of contracts for sale of personal property and assignments of such contracts.

74-205. Duties of county clerk and recorder.

74-206. Release and satisfaction of obligation by vendor or assignees.

74-207. Default of vendee—seizure and sale of property—application of proceeds.

**74-201.** (7591) Contract for sale of personal property. No sale of personal property, or agreement to buy or sell it for a price of two hundred dollars or more, is valid unless:

- 1. The agreement or some note or memorandum thereof be in writing, and subscribed by the party to be charged, or by his agent; or,
- 2. The buyer accepts and receives part of the thing sold, or when it consists of a thing in action, part of the evidences thereof, or some of them; or,
  - 3. The buyer, at the time of sale, pays a part of the price.

History: En. Sec. 2340, Civ. C. 1895; re-en. Sec. 5089, Rev. C. 1907; re-en. Sec. 7591, R. C. M. 1921. Cal. Civ. C. Sec. 1739. Based on Field Civ. C. Sec. 865.

### Cross-References

Bulk sales, secs. 18-201 to 18-205. Contracts required to be in writing, secs. 13-606, 93-1401-7, 93-1401-8.

### Burden of Proof

Where the value of property involved in a sale is sufficient to bring the contract of sale within the provisions of this section, the burden is on plaintiff, in an action for breach of the contract, to establish by a preponderance of evidence that a valid contract under the statutes was entered into between the parties, together with a breach of such contract, and the consequent damages. Brophy v. Idaho

Produce & Provision Co., 31 M 279, 283, 78 P 493.

### Complaint—Essentials of Agreement

Where complaint shows on its face that memorandum of agreement does not contain all essentials of agreement and such essentials cannot be ascertained without resort to oral evidence, demurrer to complaint was properly sustained. Dineen v. Sullivan, 123 M 195, 213 P 2d 241.

## Operation in General

Where a person leaves a message with a clerk, to the effect that if the plaintiff would buy in certain property to be sold under a chattel mortgage, and let a certain person buy it from him, that he would pay the plaintiff five hundred dollars, and the plaintiff acted accordingly, the transaction was not within the statute of frauds, and constituted a valid verbal contract. Frank v. Murray, 7 M 4, 10, 14 P 654.

A contract between tenants in common for the erection of a house on the common property by one at his own expense, and requiring him to make an equal division of the rents between them when the rents received equaled one-half the cost, is not within this section. Ayotte v. Nadeau, 32 M 498, 519, 81 P 145.

## Part Payment

Part payment of the purchase price upon a contract for the sale of cattle brought the transaction within the exception provided for in this section. Case v. Kramer, 34 M 142, 149, 85 P 878.

When acceptance and receipt of a part of goods or payment of a portion of the purchase price at the time of the sale by an agent of the buyer is relied upon to take the case out of the statute of frauds, it must be by one having specific authority or by a general agent having all authority, and the authority of the former cannot depend upon the same oral agreement which is sought to be rendered valid by the act of the agent. Mahoney Bros. v. Hansen Packing Co., 67 M 120, 215 P 506.

In an action for breach of contract of sale of cattle where defendant company was sought to be held liable under an arrangement made over the telephone by a third person who had never been its agent and was not specifically authorized by it to act for it, and who after completion of the conversation assured the buyer that defendant would take the cattle and thereupon paid a part of the purchase price, defendant never making any payment whatever, held that the payment was not made by the buyer and therefore the case was not taken out of the statute of frauds (subd. 3, this section) by such part pay-

ment. Mahoney Bros. v. Hansen Packing Co., 67 M 120, 215 P 506.

### Receipt or Acceptance of Goods

Where the goods are already in the buyer's possession under a written lease, such possession is not such a receipt as required by subdivision 2 of this section, absent an affirmative act by the seller assenting to such receipt by the buyer. West River Equipment Co. v. Holzworth Constr. Co., 134 M 582, 335 P 2d 298.

## Receipt or Acceptance of Part of Thing Sold

The receipt and acceptance of property sold need not be concurrent with the time of sale, but may occur at any time thereafter. Where the buyer accepts and receives the thing sold, such acceptance and receipt by one who assumes the buyer's contract is sufficient. Slater Brick Co. v. Shackleton, 30 M 390, 392, 76 P 805.

### Sufficiency of Note or Memorandum

In order to take an oral contract for the sale of personal property out of the statute of frauds, the note or memorandum thereof referred to in this section must be so drawn that the essentials of the contract may be ascertained without resort to oral evidence, the rule being complied with if the material elements of the contract are stated in general terms. Lewis v. Aronow, 77 M 348, 355, 251 P 146.

For the purpose of enabling the court to interpret the abbreviations "No. 1 D. N. S." used in a memorandum evidencing the sale of wheat to a wheat buyer, where the oral contract of sale was attacked on the ground that it was void under the statute of frauds, parol evidence was admissible to show their customary meaning in the business of dealing in wheat. Lewis v. Aronow, 77 M 348, 355, 251 P 146.

### References

Ikovich v. Silver Bow Motor Co., 117 M 268, 276, 157 P 2d 785.

### Collateral References

Frauds, Statute of \$138 et seq. 46 Am. Jur. 173, Sales, Generally.

Constitutionality, construction, and application of statute respecting sale, assignment or transfer of retail installment contracts. 10 ALR 2d 447.

Sale of contractual rights; defect in written record as ground for avoiding sale. 10 ALR 2d 728.

### Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 8 (Fall 1959).

**74-202.** (7592) **Contract to manufacture.** An agreement to manufacture a thing, from materials furnished by the manufacturer, or by another person, is not within the provisions of the last section.

History: En. Sec. 2341, Civ. C. 1895; re-en. Sec. 5090, Rev. C. 1907; re-en. Sec. 7592, R. C. M. 1921. Cal. Civ. C. Sec. 1740. Field Civ. C. Sec. 866.

### Collateral References

Construction and effect of exception making the statute of frauds provision inapplicable where goods are manufactured by seller for buyer. 25 ALR 2d 672.

74-203. (7593) Contract for sale of real property. No agreement for the sale of real property, or of any interest therein, is valid, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged, or his agent, thereunto authorized, in writing; but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof.

History: En. Sec. 2342, Civ. C. 1895; re-en. Sec. 5091, Rev. C. 1907; re-en. Sec. 7593, R. C. M. 1921. Cal. Civ. C. Sec. 1741. Based on Field Civ. C. Sec. 867.

#### Cross-Reference

Contracts required to be in writing, secs. 13-606, 93-1401-7, 93-1401-8.

## Claim in Opposition to Written Title—Burden of Proof

Where it is sought to found a claim, as for a right of way, to a part of a ranch, based upon oral negotiations, and the owner is dead, this section furnishes to the heirs their only defense; if there was, in fact, an agreement to convey the right of way, the owner's death would not necessarily defeat a right to have specific performance decreed, but to authorize this the terms of the contract must be definite and full, and be made out by clear and unambiguous proof. Lewis v. Patton, 42 M 528, 533, 113 P 745.

Where a party asserts a claim to realty in opposition to the written title, he has the burden of proof, and the evidence in support of it must be clear, full and satisfactory, nothing being left to conjecture or speculation. MacGinniss Realty Co. v. Hinderager, 63 M 172, 206 P 436.

### Complaint-Allegation of Writing

Although a contract to be valid must be in writing, that fact is a matter of proof and need not be alleged in the pleading. Johnson v. Elliot, 123 M 597, 218 P 2d 703, 706.

### Complaint-Essentials of Agreement

Where complaint shows on its face that memorandum of agreement does not contain all essentials of agreement and such essentials cannot be ascertained without resort to oral evidence, demurrer to complaint was properly sustained. Dineen v. Sullivan, 123 M 195, 213 P 2d 241.

### Memorandum

The memorandum must contain all the essentials of the contract but if the material elements are stated in general terms all the details or particulars need not be stated. Johnson v. Elliot, 123 M 597, 218 P 2d 703, 707.

An endorsed bank check with the additional words "payment land" written on it is insufficient to constitute the written "note or memorandum" required by the statutes for it does not contain all the essentials of the agreement. Lewis v. Peterson, 127 M 474, 267 P 2d 127, 128.

## Operation in General

An oral agreement by a purchaser at a judicial sale of a lode mining claim to take the deed in his own name, and convey to another, is void as within this section. Largey v. Leggat, 30 M 148, 157, 75 P 950.

A contract between tenants in common for the erection of a house on the common property by one at his own expense, and requiring him to make an equal division of the rents between them when the rents received equaled one-half the cost, does not come within the meaning of this section. Ayotte v. Nadeau, 32 M 498, 519, 81 P 145.

Where plaintiff sought to recover money on a demand loan, defendant was properly allowed to introduce testimony tending to show that the money paid him by the former was not a loan, but a partial payment upon the purchase price of real property sold under an oral contract, even though such contract of purchase was invalid, and therefore unenforceable, under the statute of frauds. Perkins v. Allnut, 47 M 13, 14, 130 P 1.

Where it appears, in an action of ejectment, that monuments, on the boundary between the lands of adjoining properties, are in place and have been identified by the witnesses for the plaintiff, thus making certain that which can be made cer-

tain, in conformity with section 49-130, and showing that there was no dispute as to the true dividing line, no valid agreement between the parties establishing the dividing line could have been made without a complete observance of the statute of frauds, as expressed in this section. Myrick v. Peet, 56 M 13, 26, 180 P 574.

A life estate in real property (or a joint tenancy with the right of survivorship) can only be created by deed or will, under the statute of frauds; therefore the contention of the grantee in a deed which reserved no such estate in the grantor that it was orally understood between the parties that the instrument should have that effect is not maintainable. Hayes v. Moffatt, 83 M 214, 228, 271 P 433.

## Oral Agreement Being Performed

Where two persons had entered into a joint adventure for the purchase of ranch lands, in suit by one party for dissolution of the partnership and an accounting, contention of defendant that purchase of certain additional land, if part of agreement to purchase for benefit of partnership, was void because not in writing, was not a defense, because both parties had performed and were performing their part of oral agreement to buy ranch properties. Ivins v. Hardy, 123 M 513, 217 P 2d 204, 206.

### Part Performance

Where it appeared from plaintiff's evidence in a suit to enforce specific performance of an oral contract to sell real property, that he had fully performed all the terms of the agreement to be performed by him, and that defendant had put him in actual possession of the premises, upon which he had erected substantial improvements, the court had the power to grant the relief asked for. Stevens v. Trafton, 36 M 520, 528, 93 P 810.

A parol agreement for the sale or exchange of real property may be specifically enforced in case of part performance, and where the vendee takes possession and makes valuable improvements, there is a sufficient part performance to take the case out of the statute of frauds. Hogan v. Thrasher, 72 M 318, 327, 233 P 607.

For possession by the vendee to constitute part performance of a parol agreement to sell or exchange land, such possession must be in pursuance of the agreement and not merely a continuance of a former possession; but where possession is followed by the making of valuable and permanent improvements, it is referable to the new relation created by the contract, rather than the old one. Hogan v. Thrasher, 72 M 318, 327, 233 P 607.

### "Party to Be Charged"

The "party to be charged" means the party to be charged in the particular suit. Johnson v. Elliot, 123 M 597, 218 P 2d 703, 707.

### Presumption of Written Contract

The law will presume that a contract was in writing in the absence of any statement to the contrary. Johnson v. Elliot, 123 M 597, 218 P 2d 703, 706.

### Rights of Way of Necessity

There are no implied grants or reservations of rights of way of necessity in Montana. Simonson v. McDonald, 131 M 494, 311 P 2d 982, 984.

## Settler May Convey Rights in Public Lands Orally

A settler upon public lands of the United States may convey his right therein, with water rights appurtenant thereto, orally, with or without consideration, to one who thereupon takes immediate possession thereof. Geary v. Harper, 92 M 242, 248, 12 P 2d 276.

#### Statute of Frauds Must Be Pleaded

Where a defendant, in a suit for specific performance, admitted the making of the contract and relied on other defenses than the statute of frauds to defeat the action, he could not avail himself of this section without specially pleading it. Christiansen v. Aldrich, 30 M 446, 453, 76 P 1007; Mitchell v. Henderson, 37 M 515, 520, 97 P 942.

## Sufficiency of Memorandum

The note or memorandum necessary to meet the requirements of this section may consist of several writings, and it is sufficient if it contains all the essentials of the contract, although they are stated in general terms. Hughes v. Melby, 135 M 415, 340 P 2d 511.

### References

Dreidlein v. Manger, 69 M 155, 163, 220 P 1107; Bauer v. Monroe, 117 M 306, 311, 320, 158 P 2d 485.

### Collateral References

Frauds, Statute of 55-80; Specific Performance 40-47.

37 C.J.S. Frauds, Statute of § 68 et seq.; 81 C.J.S. Specific Performance §§ 52-54, 58-60.

49 Am. Jur. 488, Statute of Frauds, §§ 149-235.

Signing of contract by agent of undisclosed principal as satisfying statute of frauds. 23 ALR 932 and 138 ALR 330.

Necessity of written authority to enable agent to make contract within statute of frauds. 27 ALR 606.

Name of principal or of authorized agent, in body of instrument, as satisfying statute of frauds where transaction was not conducted by him. 28 ALR 1114.

Agreement to release, discharge, or assign real estate mortgage as within stat-

ute of frauds. 32 ALR 874.

Sufficiency of writing under statutes requiring agreements for the payment of commission, or authorizing or employing a broker for the sale or purchase of real estate for compensation or commission, or a memorandum thereof, to be in writing. 80 ALR 1456.

Undelivered deed or escrow pursuant to oral contract, as satisfying statute of frauds. 100 ALR 196.

Parol lease for term of a year to commence in future as within statute of frauds. 111 ALR 1465.

Place of signature on memorandum to satisfy statute of frauds. 112 ALR 937.

Part performance to take oral contract of lease out of statute of frauds predicated upon acts or conduct of one in possession of the property under another contract or right. 125 ALR 1468.

Parol partition and the statute of frauds. 133 ALR 476.

Description in memorandum defective or silent as to boundary line of land retained by seller as sufficient to satisfy statute of frauds. 139 ALR 965.

74-204. (7594) Filing of contracts for sale of personal property and assignments of such contracts. All contracts, notes, and instruments for the transfer or sale of personal property, where the title is stipulated to remain in the vendor until the payment of the purchase price, or some part thereof, shall be in writing, and the original or true copy thereof, certified by the county clerk and recorder, shall be filed with the county clerk and recorder of the county wherein said personal property was situated at the time of the execution of said contract, note, or other instrument for the transfer or sale of said personal property, and if the vendee resides without said county, the original or a certified copy thereof shall be filed in the county wherein the vendee resides, otherwise, any such contract, note, or instrument is void as to bona fide purchasers, mortgagees, or attaching creditors of such property prior to such filing.

All assignments of contracts, notes, and instruments for the transfer or sale of personal property, for which filing is herein provided for, shall be in writing, and shall contain the post-office address of the assignee, and the original or a true copy of such assignment or assignments, certified by the county clerk and recorder, shall be filed with the county clerk and recorder of the county wherein said personal property was situated at the time of the execution of said contract, note, or other instrument, and if the vendee resides without said county, the original or a certified copy of such assignment or assignments shall be filed in the county wherein the vendee resides, otherwise, any such assignment or assignments are void as to bona fide purchasers, mortgagees, or attaching creditors of such property prior to such filing.

History: En. Sec. 1, p. 124, L. 1899; re-en. Sec. 5092, Rev. C. 1907; amd. Sec. 1, Ch. 52, L. 1911; re-en. Sec. 7594, R. C. M. 1921; amd. Sec. 1, Ch. 145, L. 1925; amd. Sec. 1, Ch. 70, L. 1943.

### Cross-References

Motor vehicles, conditional sales contracts, sec. 53-110.

Railroad equipment and rolling stock, conditional sales contracts, secs. 72-305 to 72-307.

Removal of property under conditional sale contract from state, larceny, sec. 94-1812.

Sale of property under conditional sales contract without consent of vendor, larceny, sec. 94-1812.

### Assignment of Chattel Mortgage

Where a chattel mortgage, executed by the purchaser of the property under a conditional sale contract, was filed for record prior to the recordation of the contract, it was as valid in the hands of the assignee of the mortgage as it was in those of the bona fide mortgagee for value and without notice, even though the assignee may have had actual notice of the existence of the conditional contract of sale at the time of the assignment. Hoeller v. Moog, 60 M 74, 80, 81, 198 P 367.

### Attachment

When personalty had been levied upon before a conditional sale contract covering it was filed in the office of the county clerk and recorder, it was impressed with the lien which continued in full force and effect until judgment, nothing in the meantime transpiring to destroy it, rendering the contract void as to attaching creditor, under this section. Billings Hardware Co. v. Bryan, 63 M 14, 20, 206 P 418.

### Construction of Contract

A contract for the sale of an article wherein it was stipulated that title should remain in the vendor until the purchase price was paid, construed as a conditional sale contract under this section, and held not susceptible of construction as one of bailment. Hodson v. O'Keeffe, 71 M 322, 329, 229 P 722.

### Farm Machinery

Where conditional sale contracts were not filed with the county clerk as required by this section, they were void as to bona fide purchasers, mortgagees or attaching creditors. Yale Oil Corp. v. Sadlacek, 99 M 411, 417, 43 P 2d 887.

## Filing of Assignment Not Constructive Notice

Since this section provides only for the filing of conditional sale contracts, and not for the filing of assignments thereof, filing of the latter does not impart constructive notice, and proof of the assignment offered for the purpose of showing such notice in the buyer of the article covered by the contract was properly excluded. Parsons v. Rice, 81 M 509, 525, 264 P 396.

## Filing of Chattel Mortgages

A conditional sale contract of mortgaged personal property made after the due filing of the mortgage—though valid as between the parties to it—is void as against the mortgagee, and the writing evidencing the sale is inadmissible in evidence in an action for conversion against the seller who retook the property on breach by the buyer. Doering v. Selby, 75 M 416, 420, 244 P 485.

Under this section, a conditional sale contract reserving title in the vendor until full payment of the purchase price, is void as to bona fide purchasers, mortgagees or attaching creditors, if it or a properly certified copy thereof was not filed for record with the county clerk prior to the time they became such. Herd v. Freeman, 84 M 32, 37, 273 P 1047.

In an action in claim and delivery by the seller of personal property under a conditional sale contract, which property was subsequently mortgaged by the buyer to defendants and by them bought in at foreclosure sale, defendant mortgagees were entitled to prevail under the last above rule, where at the time they took their mortgage the sale contract had not been filed for record and they were ignorant of its existence. Herd v. Freeman, 84 M 32, 37, 273 P 1047.

## Finance Company Not Liable as Registered Owner

A finance corporation to which a dealer in automobiles had assigned a conditional sale contract covering a truck which, in colliding with a car parked on the highway, caused injuries to plaintiff, held not liable in damages on the theory advanced that it being the registered owner of the offending truck, liability followed. Coombes v. Letcher, 104 M 371, 379, 66 P 2d 769.

## Mortagagee Not Bona Fide Purchaser, When

In an action in conversion of machinery covered by conditional sale contracts by one who knew that the contracts existed and that the seller retained title until full payment was made but nevertheless took mortgages thereon, evidence held to sustain the finding of the trial court that plaintiff was not a bona fide mortgagee, within the meaning of this section, and therefore not entitled to recover against the seller of the machinery which had been seized and disposed of at the time plaintiff acquired its mortgages. Yale Oil Corp. v. Sedlacek, 99 M 411, 418, 43 P 2d 887.

While a pre-existing debt constitutes a valuable consideration for a sale or a chattel mortgage, it is not such a consideration as will support the claim of a mortgagee that he is a bona fide purchaser within the meaning of this section, unless the creditor has granted an extension of time for payment of such a debt, or has in some way altered his condition for the worse. Yale Oil Corp. v. Sedlacek, 99 M 411, 418, 43 P 2d 887.

Mortgagees who had constructive notice of facts impeaching mortgagor's title and right to mortgage branded cattle covered by conditional sales contract were not "bona fide mortgagees" within meaning of this section. Merrion v. Humphreys, 119 M 495, 176 P 2d 665, 669.

## When Unfiled Contract Is Admissible in Evidence

Where defendant in a claim and delivery action claims as a bona fide purchaser, an unfiled conditional sale contract covering the article is void as to him and is inadmissible in evidence against him; but where his answer is a general denial and at the time it is offered in evidence there is nothing to show the nature of defendant's claim it is admissible, subject to be stricken upon undisputed testimony that defendant was a bona fide purchaser. Harvey E. Mack Co. v. Ryan, 80 M 524, 532 et seq., 261 P 283.

### Where Contract Must Be Filed

A conditional sale contract (subject: an automobile) must, under this section, be filed in the county where the property was at the time of the execution of the contract, and not in an adjoining county to which it was immediately removed, the home of the conditional vendee where it was kept and used. (Mr. Justice Holloway dissenting.) Fergus Motor Co. v. Sorenson, 73 M 122, 125 et seq., 235 P 422.

#### References

Brunswick-Balke-Collender Co. v. Hig-

gins, 54 M 11, 12, 165 P 1109; Hennessy Co. v. Wagner, 69 M 46, 48, 220 P 101; Angell v. Lewistown State Bank, 72 M 345, 350, 232 P 90; Commercial Credit Co. v. O'Brien, 115 M 199, 207, 146 P 2d 637.

### Collateral References

Sales 460, 465, 471-474.
78 C.J.S. Sales § 560, 572, 576.
47 Am. Jur. 110, Sales, § 900 et seq.

Construction and application of statutory provisions respecting registration of conditional sale contracts in case of residents of other states. 10 ALR 2d 764.

Priority as between lien for repairs and the like, and the right of seller under conditional sales contract, as affected by statutory provisions for recording contract. 36 ALR 2d 207.

Filing or recording as factor in determining relative rights as between assignee of conditional seller and a subsequent buyer from the conditional seller after repossession or the like. 72 ALR 2d 351.

#### Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 97, 105 (Fall 1959).

74-205. (7595) Duties of county clerk and recorder. The county clerk and recorder shall keep an index record of all such contracts, notes or instruments filed in his office and shall note any assignment thereof on such index record and shall attach such assignment or assignments to the original of such contract, note or other instrument. Upon the filing of an instrument of acknowledgment or payment and satisfaction executed by the vendor or his assignee or assignees, or by the duly authorized agent or attorney of either, he shall note such satisfaction on such index record and shall attach such satisfaction to the original of such contract, note or other instrument. A fee of fifty cents (50c) shall be paid for every instrument filed.

History: En. Sec. 2, p. 124, L. 1899; 7595, R. C. M. 1921; amd. Sec. 2, Ch. 70, L. re-en. Sec. 1, Ch. 52, L. 1911; re-en. Sec. 1943.

74-206. (7596) Release and satisfaction of obligation by vendor or assignees. Upon receipt of the purchase price, the vendor, or in case the vendor has made assignment of such contract, note, or other instrument for the transfer or sale of said personal property, then the assignee or assignees of said vendor shall deliver to the vendee, or his personal representative, acknowledgment of payment, satisfaction and discharge of the obligation of such contract, note, or instrument, and any such vendor, or his personal representative or assignee or assignees, as the case may be, after the full performance of the conditions of such contract, note, or instrument, whether before or after a breach thereof, who shall for the period of thirty (30) days after being requested by the vendee, or his personal representative, for delivery of such acknowledgment of satisfaction, refuse

or neglect to execute, acknowledge and deliver to the vendee, or his personal representative, an acknowledgment of satisfaction of such contract, note, or instrument, shall be liable to the vendee, his heirs or assigns in the sum of one hundred dollars (\$100.00) and also for all actual damages occasioned or sustained by any person by such neglect or refusal.

History: En. Sec. 3, p. 124, L. 1899; re-en. Sec. 5094, Rev. C. 1907; re-en. Sec. 7596, R. C. M. 1921; amd. Sec. 3, Ch. 70, L. 1943.

Collateral References Sales ≈ 476, 481-483. 78 C.J.S. Sales §§ 571, 627 et seq.

(7597) Default of vendee—seizure and sale of property—application of proceeds. Upon default being made by the vendee in any of the terms and conditions of any contract, note, or instrument for the transfer or sale of personal property, where the title to said property is stipulated to remain in the vendor until the payment of the purchase price, the vendor may recover the possession of said property in an action of claim and delivery, brought and conducted as provided by law for such action; and, in addition thereto, it shall also be lawful for the vendor of any such personal property to insert in any such conditional sale contract, note, or instrument, and make a part thereof, a clause authorizing the sheriff of the county in which said property, or any part thereof, may be, upon request of the vendor and the delivery to him of a copy of such contract. note, or instrument, certified by the county clerk and recorder of the county where the same is on file as being a true copy, to take possession of such property in case of such default, and sell the same after notice given therefor for such time and in the manner provided by law for sheriff's sale of personal property under execution, and apply the proceeds thereof, first to the payment of the expenses of such sale, and second, to the payment of the amount due on said contract, note, or instrument, and the remainder, if any, shall be paid to the vendee or assigns; and if such clause is inserted in said contract, note, or instrument, as aforesaid, and said vendor complies with the terms thereof, it is hereby made the duty of such sheriff, upon the request of said vendor, to take said property and sell the same and apply the proceeds as therein set forth. The said sheriff may require a reasonable indemnity bond from the vendor or his assigns before taking possession of or selling said property.

For his services in taking and selling the said property, the sheriff shall be entitled to fees and mileage as in the case of sale of personal property under chattel mortgage, and such fees and costs, when paid by the vendor, shall become part of the indebtedness of the vendee to the vendor, and should the proceeds of said sale not be sufficient to pay the balance due on said contract, note, or instrument, including said costs, the remainder due thereon, if any, may be recovered by the vendor in an appropriate action on the original contract, note, or instrument. Provided, however, that if said vendee shall surrender possession of said personal property to said vendor without cost and expense to said vendor, and provided also, that said vendee has paid at least thirty-three and one-third per cent (33½%) of the original purchase price of said personal property with interest, said vendor shall not be entitled to any deficiency judgment against said vendee upon said contract, note, or instrument.

History: En. Sec. 1, Ch. 146, L. 1919; re-en. Sec. 7597, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1935.

## Available to Vendee, Not to Vendor or Guarantor

The remedy provided by this section declaring that when 33½ per cent of the sale price of personal property sold conditionally has been paid and the vendor retakes and sells it, the contract shall be deemed fully performed, is available only to the vendee and not to the vendor or an absolute guarantor. General Finance Co. v. Powell, 114 M 473, 480, 138 P 2d 255.

### Repossession of Property

A provision in a promissory note (treated as a conditional sale contract) that upon breach by the maker the payee might treat the sale of the chattels (automobiles) as absolute, retake and sell them, applying the net proceeds upon the note, and if such proceeds were insuffi-

cient to discharge the debt, the maker to pay the deficiency, may properly be enforced under this section and does not contravene public policy. First Nat. Bank v. Marlowe, 71 M 461, 468, 230 P 374.

Where conditional sales contract secured payment of note there could be no recovery on the note after property was retaken. Johnson v. Sanderson, 132 M 451, 318 P 2d 248, 250.

### References

Hampton v. Commercial Credit Corp., 119 M 476, 176 P 2d 270, 279.

### Collateral References

Sales € 479, 480. 78 C.J.S. Sales §§ 597, 618. 47 Am. Jur. 146, Sales, §§ 938 et seq.

Rights and duties of parties to conditional sales contract as to resale of repossessed property. 49 ALR 2d 64.

## CHAPTER 3

## RIGHTS AND OBLIGATIONS OF SELLER—DELIVERY AND WARRANTY

Section 74-301. When a seller must act as a depositary.

74-302. When seller may resell. 74-303. Delivery on demand.

74-304. Delivery—where made. 74-305. Expense of transportation.

74-306. Notice of election as to delivery.

74-307. Buyer's directions as to manner of sending thing sold.

74-308. Delivery to be within reasonable hours.

74-309. Warranty defined.

74-310. No implied warranty in mere contract of sale.

74-311. Warranty of title to personal property.

74-312. Warranty on sale by sample.

74-313. When seller knows that buyer relies on his statements, etc.

74-314. Merchandise not in existence.

74-315. Manufacturer's warranty against latent defects.

74-316. Thing bought for particular purpose.

74-317. When thing cannot be examined by buyer.

74-318. Trade-marks.

74-319. Other marks.

74-320. Warranty on sale of written instrument.74-321. Warranty of provisions for domestic use.

74-322. Warranty on sale of good will.74-323. Warranty upon judicial sale.

74-324. Effect of general warranty.

74-301. (7598) When a seller must act as a depositary. After personal property has been sold, and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the property, without charge, until the buyer has had a reasonable opportunity to remove it.

History: En. Sec. 2350, Civ. C. 1895; 7598, R. C. M. 1921. Cal. Civ. C. Sec. 1748. re-en. Sec. 5095, Rev. C. 1907; re-en. Sec. Field Civ. C. Sec. 869.

### Cross-References

Attachment of property covered by conditional sales contract, sec. 93-4338.

Recovery of livestock, sec. 93-4344.

### Collateral References

Sales € 217. 77 C.J.S. Sales § 279 et seq.

74-302. (7599) When seller may resell. If a buyer of personal property does not pay for it according to contract, and it remains in the possession of the seller after payment is due, the seller may reseind the sale, or may enforce his lien for the price, in the manner prescribed by the chapter on liens.

History: En. Sec. 2351, Civ. C. 1895; re-en. Sec. 5096, Rev. C. 1907; re-en. Sec. 7599, R. C. M. 1921. Cal. Civ. C. Sec. 1749. Field Civ. C. Sec. 870.

## Operation and Effect

This section providing that the vendor on breach of a conditional sale contract by the vendee may rescind the contract, or enforce his lien for the purchase price, applies only where the possession of the property is retained throughout by the vendor, hence has no application where possession was immediately delivered to the vendee. First Nat. Bank v. Marlowe, 71 M 461, 468, 230 P 374.

### Collateral References

Sales 99, 305-315, 332.
77 C.J.S. Sales § 99; 78 C.J.S. Sales § 390, 402, 426.
46 Am. Jur. 710, Sales, § 566 et seq.

Seller's right to retain down payment on buyer's unjustified refusal to accept goods. 11 ALR 2d 701.

### Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 15 (Fall 1959).

**74-303.** (7600) **Delivery on demand.** One who sells personal property, whether it was in his possession at the time of sale or not, must put it into a condition fit for delivery, and deliver it to the buyer within a reasonable time after demand, unless he has a lien thereon.

History: En. Sec. 2360, Civ. C. 1895; re-en. Sec. 5097, Rev. C. 1907; re-en. Sec. 7600, R. C. M. 1921. Cal. Civ. C. Sec. 1753. Field Civ. C. Sec. 871.

## Action to Compel Delivery

As a general rule, a proceeding to compel a corporation to deliver a certificate of stock, or an action for damages for failure to make delivery, cannot be maintained unless the corporation has refused delivery. Gallatin Co. F. Alliance v. Flannery, 59 M 534, 538, 197 P 996.

## References

Stanhope v. Shambow, 54 M 360, 364,

170 P 752; Backer v. Parker-Morelli-Barclay M. Co., 87 M 595, 599, 289 P 571; Montgomery v. First Nat. Bank of Dillon, 114 M 395, 408, 136 P 2d 760.

### Collateral References

Sales ≈ 150-167. 77 C.J.S. Sales § 132 et seq. 46 Am. Jur. 376, Sales, §§ 196 et seq.

What amounts to acknowledgment by third person that he holds goods on buyer's behalf within statutory provision respecting delivery when goods are in possession of third person. 4 ALR 2d 213.

**74-304.** (7601) **Delivery—where made.** Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or if it is not then in existence, it is deliverable at the place where it is produced.

History: En. Sec. 2361, Civ. C. 1895; re-en. Sec. 5098, Rev. C. 1907; re-en. Sec. 7601, R. C. M. 1921. Cal. Civ. C. Sec. 1754. Field Civ. C. Sec. 872.

### Operation and Effect

Where an automobile dealer has no ostensible place of business other than the

garage in which his machines are kept, and he sells and transfers the possession of a machine at such garage, that place, in the absence of any agreement to the contrary, becomes the place of business in contemplation of law, and a redelivery at the garage by the buyer, with notice to the seller that the machine is there, con-

stitutes a restoration. Stanhope v. Shambow, 54 M 360, 363, 364, 170 P 752.

### References

Montgomery v. First Nat. Bank of Dillon, 114 M 395, 408, 136 P 2d 760; Har-

denburgh v. Hardenburgh, 115 M 469, 480, 146 P 2d 151.

## Collateral References

Sales 79.
77 C.J.S. Sales § 143 et seq.

74-305. (7602) Expense of transportation. One who sells personal property must bring it to his own door, or other convenient place, for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

History: En. Sec. 2362, Civ. C. 1895; re-en. Sec. 5099, Rev. C. 1907; re-en. Sec. 7602, R. C. M. 1921. Cal. Civ. C. Sec. 1755. Field Civ. C. Sec. 873.

Collateral References Sales 74-78. 77 C.J.S. Sales § 75.

74-306. (7603) Notice of election as to delivery. When either party to a contract of sale has an option as to the time, place, or manner of delivery, he must give the other party reasonable notice of his choice; and if he does not give such notice within a reasonable time, his right of option is waived.

History: En. Sec. 2363, Civ. C. 1895; re-en. Sec. 5100, Rev. C. 1907; re-en. Sec. 7603, R. C. M. 1921. Cal. Civ. C. Sec. 1756. Field Civ. C. Sec. 874.

#### Collateral References

Sales \$\infty 79, 81, 83.
77 C.J.S. Sales \\$\\$ 143, 147, 154 et seq.

74-307. (7604) Buyer's directions as to manner of sending thing sold. If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner of sending, or it will be at his own risk during its transportation. If he follows such directions, or if, in the absence of special directions, he uses ordinary care in forwarding the thing, it is at the risk of the buyer.

History: En. Sec. 2364, Civ. C. 1895; re-en. Sec. 5101, Rev. C. 1907; re-en. Sec. 7604, R. C. M. 1921. Cal. Civ. C. Sec. 1757. Field Civ. C. Sec. 875.

Collateral References

Sales©=83, 201. 77 C.J.S. Sales §§ 154, 255.

74-308. (7605) Delivery to be within reasonable hours. The delivery of a thing sold can be offered or demanded only within reasonable hours of the day.

History: En. Sec. 2365, Civ. C. 1895; re-en. Sec. 5102, Rev. C. 1907; re-en. Sec. 7605, R. C. M. 1921, Cal. Civ. C. Sec. 1758. Field Civ. C. Sec. 876. Collateral References Sales©=81.

77 C.J.S. Sales § 147.

**74-309.** (7606) **Warranty defined.** A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present, or future.

History: En. Sec. 2370, Civ. C. 1895; re-en. Sec. 5103, Rev. C. 1907; re-en. Sec. 7606, R. C. M. 1921. Cal. Civ. C. Sec. 1763. Field Civ. C. Sec. 877.

### Cross-Reference

Animals with false pedigree, penalty, sec. 94-1814.

### Character of Contract

Where the character of a contract is at issue, to wit, whether it was one of sale, a sale with warranty, or one of agency, the primary test is the intention of the parties gathered from the whole scope and effect of the language employed. Butte Floral Co. v. Reed, 65 M 138, 152, 211 P 325.

### Election of Remedies

On breach of warranty, the buyer may either retain the article and sue for damages, or rescind the contract and sue for a return of the purchase price paid. Butte Floral Co. v. Reed, 65 M 138, 152, 211 P 325.

### Privity of Contract

Remote vendee, having no contractual relationship with defendant rubber boot manufacturer did not state a claim for breach of warranty where there was no showing of privity of contract between the defendant and the remote vendee. Larson v. United States Rubber Co., 163 F Supp 327, 328, 330.

### Secondhand Article

The fact that an article sold is secondhand and known to be such does not of itself prevent an affirmation as to its condition constituting an express warranty. Butte Floral Co. v. Reed, 65 M 138, 152, 211 P 325.

### References

Lander v. Sheehan, 32 M 25, 30, 79 P 406.

### Collateral References

Sales€⇒246. 77 C.J.S. Sales § 301. 46 Am. Jur. 482, Sales, §§ 299 et seq.

Secondhand article, sale of, implied warranty of quality, condition, or fitness. 151 ALR 446.

Assignability of warranty of goods and chattels. 17 ALR 2d 1196.

74-310. (7607) No implied warranty in mere contract of sale. Except as prescribed by this chapter, a mere contract of sale or agreement to sell does not imply a warranty.

History: En. Sec. 2371, Civ. C. 1895; re-en. Sec. 5104, Rev. C. 1907; re-en. Sec. 7607, R. C. M. 1921. Cal. Civ. C. Sec. 1764. Field Civ. C. Sec. 878.

#### Burden of Proof

Where breach of warranty of a piece of machinery for a certain purpose is relied upon, in an action to recover its purchase price, the burden of showing unfitness resting upon defendant is not sustained by evidence that upon a test it did poor work, unless it is also shown that the adjustment and operation were correct at the time of the test. Jones v. Armstrong, 50 M 168, 176, 145 P 949.

## Implied Warranty of Fitness for Use

While the general rule in most jurisdictions is that the seller of merchandise makes an implied warranty of its fitness for the use for which it is purchased, the rule in Montana is that there is no such warranty under this section, except where the seller is the manufacturer of something to be consumed as food, and in cases where the buyer is not accorded an opportunity

to examine the article bought. (See 74-316 and 74-317). Under this rule seller of defective douche, not having manufactured the article, and plaintiff and seller having had equal opportunity to discover alleged defects, there was no implied warranty. Harrington v. Montgomery Drug Co., 111 M 564, 566, 111 P 2d 808.

### Secondhand Article

One knowingly buying a secondhand article from a person not a dealer or manufacturer, relying upon his own judgment, takes it unaccompanied by an implied warranty as to its fitness for a special purpose. Jones v. Armstrong, 50 M 168, 176, 145 P 949.

### Collateral References

Sales \$\infty 262\frac{1}{2}.\$
77 C.J.S. Sales § 314.
46 Am. Jur. 513, Sales, §§ 332 et seq.

### Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 13 (Fall 1959).

**74-311.** (7608) Warranty of title to personal property. One who sells or agrees to sell personal property, as his own, thereby warrants that he has a good and unencumbered title thereto.

History: En. Sec. 2372, Civ. C. 1895; re-en. Sec. 5105, Rev. C. 1907; re-en. Sec. 7608, R. C. M. 1921. Cal. Civ. C. Sec. 1765. Field Civ. C. Sec. 879.

### Cross-Reference

Bona fide purchaser protected, sec. 67-1705.

## Guaranty to Deliver

An endorsement on a bill of sale by the buyer of personal property on a resale thereof that he would "guarantee delivery of same" does not constitute a warranty of title. Pincus v. Muntzer, 34 M 498, 501, 87 P 612.

Where the transfer of personal property was evidenced by a bill of sale, to which the purchaser, upon reselling the goods, added an endorsement guaranteeing delivery, but not expressly warranting title, the language of this section may not be read into the endorsement, and thereby a written warranty created, so as to make the statutory limitation of eight years, mentioned in section 93-2603, applicable to a suit for a breach of a warranty of title to the property sold. Pincus v. Muntzer, 34 M 498, 501, 87 P 612.

Possession of Property by Buyer

In this country it is the general rule

that, so long as the buyer of personal property is in the undisturbed possession of it, he cannot recover damages for a breach of warranty of title or set up want of title in the seller as defense to an action to recover the purchase price. Courtney v. Gordon, 74 M 408, 415, 241 P 233.

### References

Heffron v. Thomas, 61 M 10, 13, 201 P 572.

## Collateral References

Sales € 263.
77 C.J.S. Sales § 333.
46 Am. Jur. 574, Sales, §§ 403-409.

**74-312.** (7609) Warranty on sale by sample. One who sells or agrees to sell goods by sample, thereby warrants the bulk to be equal to the sample.

History: En. Sec. 2373, Civ. C. 1895; re-en. Sec. 5106, Rev. C. 1907; re-en. Sec. 7609, R. C. M. 1921. Cal. Civ. C. Sec. 1766. Field Civ. C. Sec. 880.

Collateral References

Sales@=271.

77 C.J.S. Sales § 318. 46 Am. Jur. 546, Sales, §§ 362-374.

What amounts to a "sale by sample" as regards implied warranties. 12 ALR 2d 524.

74-313. (7610) When seller knows that buyer relies on his statements, etc. One who sells or agrees to sell personal property, knowing that the buyer relies upon his advice or judgment, thereby warrants to the buyer that neither the seller, nor any agent employed by him in the transaction, knows the existence of any fact concerning the thing sold which would, to his knowledge, destroy the buyer's inducement to buy.

History: En. Sec. 2374, Civ. C. 1895; re-en. Sec. 5107, Rev. C. 1907; re-en. Sec. 7610, R. C. M. 1921. Cal. Civ. C. Sec. 1767. Field Civ. C. Sec. 881.

References

Butte Floral Co. v. Reed, 65 M 138, 152, 211 P 325.

Collateral References

Sales € 268.
77 C.J.S. Sales § 312.
46 Am. Jur. 539, Sales, § 353.

**74-314.** (7611) **Merchandise not in existence.** One who agrees to sell merchandise not then in existence, thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties, and as nearly so, at the place of delivery, as can be secured by reasonable care.

History: En. Sec. 2375, Civ. C. 1895; re-en. Sec. 5108, Rev. C. 1907; re-en. Sec. 7611, R. C. M. 1921. Cal. Civ. C. Sec. 1768. Field Civ. C. Sec. 882.

Collateral References Sales 265-274. 77 C.J.S. Sales § 314.

74-315. (7612) Manufacturer's warranty against latent defects. One who sells or agrees to sell an article of his own manufacture, thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture, and also that neither he nor his agent in such manufacture has knowingly used improper materials therein.

History: En. Sec. 2376, Civ. C. 1895; 7612, R. C. M. 1921. Cal. Civ. C. Sec. 1769. re-en. Sec. 5109, Rev. C. 1907; re-en. Sec. Field Civ. C. Sec. 883.

### Privity of Contract

In action for breach of warranty no recovery may be had in the absence of privity of contract between the manufacturer and the person seeking to enforce the warranty. Larson v. United States Rubber Co., 163 F Supp 327, 328, 330.

### References

Rowe v. Emerson-Brantingham Co., 61 M 73, 77, 201 P 316.

### Collateral References

46 Am. Jur. 528, Sales, § 345.

74-316. (7613) Thing bought for particular purpose. One who manufactures an article under an order for a particular purpose, warrants by the sale that it is reasonably fit for that purpose.

History: En. Sec. 2377, Civ. C. 1895; re-en. Sec. 5110, Rev. C. 1907; re-en. Sec. 7613, R. C. M. 1921. Cal. Civ. C. Sec. 1770. Field Civ. C. Sec. 884.

#### Cross-Reference

Damages for breach of warranty, sec. 17-314.

### Application of Section

Where defendant did not have enough linseed pellets to fill plaintiff's order for sheep feed and suggested that plaintiff try another type of pellet which was a part of defendant's stock on hand it was improper to give instruction under this section since there was no evidence that such pellets were manufactured under the order for a specific purpose. Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co., 123 M 396, 217 P 2d 549, 553.

### Breach of Implied Warranty

One who purchases articles for a particular purpose need not rescind the con-

tract and restore them to the seller upon discovering a breach of the implied warranty, but may set up his claim for damages by way of counterclaim in an action by the plaintiff for the purchase price. Busbee v. Gagnon Co., 50 M 203, 212, 146 P 275.

#### References

Rowe v. Emerson-Brantingham Co., 61 M 73, 77, 201 P 316; Harrington v. Montgomery Drug Co., 111 M 564, 567, 111 P 2d 808.

### Collateral References

46 Am. Jur. 529, Sales, §§ 346 et seq.

Implied warranty of fitness by one serving food. 7 ALR 2d 1027.

### Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 13 (Fall 1959).

74-317. (7614) When thing cannot be examined by buyer. One who sells or agrees to sell merchandise inaccessible to the examination of the buyer, thereby warrants that it is sound and merchantable.

History: En. Sec. 2378, Civ. C. 1895; re-en. Sec. 5111, Rev. C. 1907; re-en. Sec. 7614, R. C. M. 1921. Cal. Civ. C. Sec. 1771. Field Civ. C. Sec. 885.

## Equal Opportunity to Discover Defect

In an action for personal injuries alleged to have been sustained by the use of a defective douche or tube used for internal drainage purposes, brought on the theory that in its sale the dealer impliedly warranted the article as sound and fit for the purpose for which it was sold, held, that the seller not having been the manufacturer of the article under section 74-316, and the plaintiff having had an equal

opportunity with the seller to discover its alleged defects, there was no implied warranty under this section, and the evidence insufficient to go to the jury. Harrington v. Montgomery Drug Co., 111 M 564, 566, 111 P 2d 808.

### References

Rowe v. Emerson-Brantingham Co., 61 M 73, 77, 201 P 316.

### Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 13 (Fall 1959).

**74-318.** (7615) **Trade-marks.** One who sells or agrees to sell any article to which there is affixed or attached a trade-mark, thereby warrants that trade-mark to be genuine and lawfully used.

History: En. Sec. 2379, Civ. C. 1895; 7615, R. C. M. 1921. Cal. Civ. C. Sec. 1772. re-en. Sec. 5112, Rev. C. 1907; re-en. Sec. Field Civ. C. Sec. 886.

### Collateral References

Sales@2621/2, 264. 77 C.J.S. Sales §§ 314, 328. 46 Am. Jur. 535, Sales, § 351.

particular description, 49 ALR 2d 852.

Implied warranty of fitness on sale of article by trade name, trade-mark or other

74-319. (7616) Other marks. One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof, or the place where it was, in whole or in part, produced, manufactured, or prepared, thereby warrants the truth thereof.

History: En. Sec. 2380, Civ. C. 1895; re-en. Sec. 5113, Rev. C. 1907; re-en. Sec. 7616, R. C. M. 1921. Cal. Civ. C. Sec. 1773. Field Civ. C. Sec. 887.

#### References

Mason v. Mason, 90 M 489, 502, 4 P 2d 475.

74-320. (7617) Warranty on sale of written instrument. One who sells or agrees to sell an instrument purporting to bind anyone to the performance of any act, thereby warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties thereto, where that is material, the extinction of its obligations, or its invalidity for any cause.

History: En. Sec. 2381, Civ. C. 1895; re-en. Sec. 5114, Rev. C. 1907; re-en. Sec. 7617, R. C. M. 1921. Cal. Civ. C. Sec. 1774. Field Civ. C. Sec. 888.

### References

Newer v. First Nat. Bank of Harlem, 74 M 549, 556, 241 P 613.

## Collateral References

Collateral References

77 C.J.S. Sales § 307.

Sales@261.

Sales 265 et seq. 77 C.J.S. Sales § 324.

### Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 40 (Fall 1959).

74-321. (7618) Warranty of provisions for domestic use. One who makes a business of selling provisions for domestic use warrants, by sale thereof, to one who buys for actual consumption, that they are sound and wholesome.

History: En. Sec. 2382, Civ. C. 1895; re-en. Sec. 5115, Rev. C. 1907; re-en. Sec. 7618, R. C. M. 1921. Cal. Civ. C. Sec. 1775. Based on Field Civ. C. Sec. 889.

### Animal Food

This section applies although the food is for animal consumption. Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co., 123 M 396, 217 P 2d 549, 554.

### Includes Foods Sold in Cans, Sealed Packages and Bulk

This section providing that one engaged in the sale of foods for domestic use impliedly warrants that they are wholesome and fit for food, is all-inclusive and therefore includes foods sold in cans or sealed packages as well as in bulk. Bolitho v. Safeway Stores, Inc., 109 M 213, 216, 95 P 2d 443.

## Instruction

Instruction "That by this statute the defendants in this case are made the insurers of the purity of the food product sold by it to plaintiff and whether or not the defendants knew of the impure condition of the food, if it were impure, is immaterial in this case" was proper. Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co., 123 M 396, 217 P 2d 549, 554.

## Measure of Damages

The applicable section governing the measure of damages when plaintiff's sheep died after eating feed sold by defendant is section 17-314 wherein defendant is

## Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 13 (Fall 1959).

liable for all damages that were foreseen, or could easily have been foreseen, as likely to result from the putting of the thing sold to the use for which it was sold. Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co., 126 M 415, 252 P 2d 1040, 1045.

### Negligence in Continuing Feed

Where some sheep died after feeding first day, whether plaintiff was negligent in continuing feed second day was for the jury. Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co., 123 M 396, 217 P 2d 549, 555.

### Sale—Determination

Although pellets for sheep feed were sent to plaintiff under an invoice marked "Trial" without any price being stated, where there was evidence that defendant expected pay for the pellets if they proved palatable, it was a jury question whether the pellets had been "sold" and proper to give an instruction under this section. Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co., 123 M 396, 217 P 2d 549, 553.

On a second appeal of a case where the evidence of the "sale" of sheep feed given in the second trial was the same as given in the first trial, the supreme court determination on the first appeal that the plaintiff's evidence was sufficient to make out a prima-facie case of sale became the law of the case and binding upon the parties and the district court. Seaton Ranch Co. v. Montana Vegetable Oil & Feed Co., 126 M 415, 252 P 2d 1040, 1042.

## Seller Made the Insurer of Purity

In an action for damages occasioned by consumption of deleterious and unwhole-some food bought in a container or package, based upon the Pure Food and Drug Act, section 27-101 et seq., and this section, under the former of which the implied warranty of the article sold extends to the public generally, while under this section it applies only to the immediate purchaser, held, that the seller is made the insurer of the purity of food products sold by him, and guilty knowledge of its impurity is not an ingredient of the offense charged. Bolitho v. Safeway Stores, Inc., 109 M 213, 216, 95 P 2d 443.

### References

Kelley v. John R. Daily Co., 56 M 63, 74, 181 P 326; Harrington v. Montgomery Drug Co., 111 M 564, 567, 111 P 2d 808.

### Collateral References

Sales € 274. 77 C.J.S. Sales § 331.

Implied warranty by other than packer of fitness of food sold in sealed cans. 90 ALR 1269 and 142 ALR 1434.

Implied warranty of fitness by one serving food. 7 ALR 2d 1027.

Existence of implied warranty of fitness by manufacturer or seller of food or food products. 77 ALR 2d 55.

### Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 5, 13 (Fall 1959).

74-322. (7619) Warranty on sale of good will. One who sells the good will of a business thereby warrants that he will not endeavor to draw off any of the customers.

History: En. Sec. 2383, Civ. C. 1895; re-en. Sec. 5116, Rev. C. 1907; re-en. Sec.

7619, R. C. M. 1921. Cal. Civ. C. Sec. 1776. Field Civ. C. Sec. 890.

**74-323.** (7620) Warranty upon judicial sale. Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property.

History: En. Sec. 2384, Civ. C. 1895; re-en. Sec. 5117, Rev. C. 1907; re-en. Sec. 7620, R. C. M. 1921. Cal. Civ. C. Sec. 1777. Field Civ. C. Sec. 891.

## Collateral References

Judicial Sales €= 48 and other particular topics.

50 C.J.S. Judicial Sales §§ 8, 64.

## References

McCarthy v. State Bank of Townsend, 54 M 319, 329, 170 P 15.

**74-324.** (7621) **Effect of general warranty.** A general warranty does not extend to defects inconsistent therewith of which the buyer was then aware, or which were then easily discernible by him without the exercise of peculiar skill; but it extends to all other defects.

History: En. Sec. 2385, Civ. C. 1895; re-en. Sec. 5118, Rev. C. 1907; re-en. Sec. 7621, R. C. M. 1921. Cal. Civ. C. Sec. 1778. Field Civ. C. Sec. 892.

Collateral References
Sales©=262, 268.
77 C.J.S. Sales §§ 310, 311.

## CHAPTER 4

## RIGHTS AND OBLIGATIONS OF BUYER—INSPECTION AND PAYMENT

Section 74-401. Price—when to be paid. 74-402. Right to inspect goods.

74-403. Rights in case of breach of warranty.

74-401. (7622) Price—when to be paid. A buyer must pay the price of the thing sold on its delivery, and must take it away within a reasonable time after the seller offers to deliver it.

History: En. Sec. 2400, Civ. C. 1895; re-en. Sec. 5119, Rev. C. 1907; re-en. Sec. 7622, R. C. M. 1921. Cal. Civ. C. Sec. 1784. Field Civ. C. Sec. 893.

### Cross-Reference

Concealing property after default, larceny, sec. 94-1812.

### References

Hardenburgh v. Hardenburgh, 115 M 469, 480, 146 P 2d 151; Bennett v. Dodgson, 129 M 228, 284 P 2d 990, 994.

## Collateral References

Sales€⇒177, 183. 77 C.J.S. Sales §§ 218, 229. 46 Am. Jur. 406, Sales, §§ 223 et seq.

74-402. (7623) Right to inspect goods. On an agreement for sale, with warranty, the buyer has a right to inspect the thing sold, at a reasonable time, before accepting it, and may rescind the contract if the seller refuses to permit him to do so.

History: En. Sec. 2401, Civ. C. 1895; re-en. Sec. 5120, Rev. C. 1907; re-en. Sec. 7623, R. C. M. 1921. Cal. Civ. C. Sec. 1785. Field Civ. C. Sec. 894. Time within which buyer must make inspection, trial, or test to determine whether goods are of requisite quality. 52 ALR 2d 900.

### Collateral References

Sales € 168. 77 C.J.S. Sales § 189.

74-403. (7624) Rights in case of breach of warranty. The breach of a warranty entitles the buyer to rescind an agreement for sale, but not an executed sale, unless the warranty was intended by the parties to operate as a condition.

History: En. Sec. 2402, Civ. C. 1895; re-en. Sec. 5121, Rev. C. 1907; re-en. Sec. 7624, R. C. M. 1921. Cal. Civ. C. Sec. 1786. Field Civ. C. Sec. 895.

## Delivery of Personalty to Purchaser

Where a contract of purchase of personalty has been fully executed by its delivery to the purchaser and his receipt or acceptance of it, he cannot rescind it. Rickards v. Aultman & Taylor M. Co., 64 M 394, 399, 210 P 82.

### References

Doornbos v. Thomas, 50 M 370, 379, 147 P 277; Advance-Rumely Threshing Co. v. Terpening, 58 M 507, 512, 193 P 752; Advance-Rumely Threshing Co. v. Wenholz, 80 M 82, 258 P 1085.

## Collateral References

Sales ≈ 120. 77 C.J.S. Sales § 100. 46 Am. Jur. 836, Sales, §§ 711 et seq.

Form and substance of notice which buyer of goods must give in order to recover damages for seller's breach of warranty, 53 ALR 2d 270.

Right of action for breach of contract which expressly leaves open for future agreement or negotiation the terms of payment for property. 68 ALR 2d 1229.

## Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 6 (Fall 1959).

## CHAPTER 5

### EXCHANGE

Section 74-501. Exchange defined.

74-502. Form of contract.

74-503. Parties have rights a 74-504. Warranty of money. Parties have rights and obligations of sellers and buyers.

**74-501.** (7632) **Exchange defined.** Exchange is a contract by which the parties mutually give, or agree to give, one thing for another, neither thing, or both things, being money only.

History: En. Sec. 2430, Civ. C. 1895; re-en. Sec. 5129, Rev. C. 1907; re-en. Sec. 7632, R. C. M. 1921. Cal. Civ. C. Sec. 1804. Field Civ. C. Sec. 903.

## References

Price v. Western Life Ins. Co., 115 M 509, 514, 146 P 2d 165.

74-502. (7633) Form of contract. The provisions of section 74-201 apply to all exchanges in which the value of the thing to be given by either party is two hundred dollars or more.

History: En. Sec. 2431, Civ. C. 1895; re-en. Sec. 5130, Rev. C. 1907; re-en. Sec. 7633, R. C. M. 1921. Cal. Civ. C. Sec. 1805. Based on Field Civ. C. Sec. 904.

### Collateral References

Collateral References Exchange of Property 1.

and Exchanges of Property.

Frauds, Statute of 69, 84. 37 C.J.S. Frauds, Statute of §§ 92, 139,

33 C.J.S. Exchange of Property § 1. Generally, see 52 Am. Jur. 675, Trades

52 Am. Jur. 685, Trades and Exchanges of Property, §§ 6 et seq.

(7634) Parties have rights and obligations of sellers and buyers. The provisions of the chapters on sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing which he gives, and of a buyer as to that which he takes.

History: En. Sec. 2432, Civ. C. 1895; re-en. Sec. 5131, Rev. C. 1907; re-en. Sec. 7634, R. C. M. 1921. Cal. Civ. C. Sec. 1806. Field Civ. C. Sec. 905.

### Collateral References

Exchange of Property 9-14. 33 C.J.S. Exchange of Property §§ 6, 7.

**74-504.** (7635) Warranty of money. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

History: En. Sec. 2433, Civ. C. 1895; 7635, R. C. M. 1921. Cal. Civ. C. Sec. 1807. re-en. Sec. 5132, Rev. C. 1907; re-en. Sec. Field Civ. C. Sec. 906.

## CHAPTER 6

### RETAIL INSTALLMENT SALES

Section 74-601. Short title.

74-602. Definitions.

74-603. Licensing of sales finance companies required.

74-604. Denial, suspension or revocation of licenses.

74-605. Investigations and complaints.

74-606. 74-607. Powers of superintendent.

Requirements and prohibitions as to retail installment contracts.

74-608. Finance charge limitation.

74-609. Refunds on prepayment.

74-610. Refinancing retail installment contract.

74-611. Penaltie 74-612. Waiver. Penalties.

74-601. Short title. This act may be cited as the "Montana Retail Installment Sales Act."

History: En. Sec. 1, Ch. 282, L. 1959.

### Law Review

Montana Law and the Uniform Commercial Code, 21 Mont. L. Rev. 1, 93 (Fall 1959).

- 74-602. Definitions. Unless otherwise clearly indicated by the context, the following words when used in this act, for the purposes of this act, shall have the meanings respectively ascribed to them in this section:
- (a) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal, but not including money or things in action. The term includes goods which, at the time of the sale or subsequently, are to be so affixed to realty as to become a part thereof whether or not severable therefrom.
- (b) "Services" means work, labor and services furnished in the delivery, installation, servicing, repair or improvement of goods.
- (e) "Motor vehicle" means any new or used automobile, mobile home, motorcycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway, excepting however, any vehicle which runs only on rails or tracks or in the air.
- (d) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction under a retail installment contract and not for the purpose of resale.
- (e) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer under a retail installment contract.
- (f) "Retail installment transaction" means a contract to sell or furnish or the sale or furnishing of goods or services by a retail seller to a retail buyer under a retail installment contract for a time sale price payable in one or more deferred installments.
- (g) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state pursuant to which a buyer promises to pay in one or more deferred installments the time sale price of goods and/or services. The term includes a chattel mortgage, conditional sales contract and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.
- (h) "Cash sale price" means the price stated in a retail installment contract for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of the retail installment contract, if such sale had been a sale for cash at a cash price instead of a retail installment transaction at a time sale price. The cash sale price may include any taxes, registration, certificate of title, license and official fees, and

cash sale prices for services, if any, and for accessories and their installation and for delivery, servicing, repairing or improving the goods.

- (i) "Official fees" means the fees prescribed by law for filing, recording or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.
- (j) "Principal balance" means the cash sale price of the goods or services which are the subject matter of the retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made therefor and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's down payment in money or goods.
- (k) "Finance charge" means the amount, as limited by section 74-608, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.
- (1) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits if a separate identified charge is made therefor and the amounts of the official fees and the finance charge.
- (m) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, Morris Plan company or savings and loan association, if so engaged. The term shall not include a person who makes only isolated purchases of retail installment contracts, which purchases are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.
- (n) "Holder" of a retail installment contract means the retail seller of the goods or services under the contract, or, if the contract is purchased by a sales finance company or other assignee, the sales finance company or other assignee.
- (o) "Person" means an individual, partnership, corporation, association, and any other group however organized.
- (p) "Superintendent" means the state superintendent of banks of the state of Montana.
- (q) Words in the singular include the plural, the masculine includes the feminine and the neuter, and vice versa.
- (r) This act shall have no application to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by such banks or other lending institutions.

History: En. Sec. 2, Ch. 282, L. 1959.

## Collateral References

Constitutionality, construction, and application of statute respecting sale, assignment or transfer of retail installment contracts. 10 ALR 2d 447.

- 74-603. Licensing of sales finance companies required. (a) No person shall engage in the business of a sales finance company in this state without a license therefor as provided in this act: Provided, however, that no bank, trust company or savings and loan association authorized to do business in this state shall be required to obtain a license under this act but shall comply with all of the other provisions of this act.
- (b) The application for such license shall be in writing, under oath and in the form prescribed by the superintendent. The application shall contain the name of the applicant; date of incorporation, if incorporated; the address where the business is or is to be conducted and similar information as to any branch office of the applicant; the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees and principal officers, and such other pertinent information as the superintendent may require.
- (c) The license fee for each calendar year or part thereof shall be the sum of one hundred dollars (\$100) for each place of business of the licensee in this state.
- (d) Each license shall specify the location of the office or branch and must be conspicuously displayed there. In case such location be changed, the superintendent shall endorse the change of location of the license without charge.
- (e) Upon the filing of such application, and the payment of said fee, the superintendent shall issue a license to the applicant to engage in the business of a sales finance company under and in accordance with the provisions of this act for a period which shall expire the last day of December next following the date of its issuance. Such license shall not be transferable or assignable. No licensee shall transact any business provided for by this act under any other name.

History: En. Sec. 3, Ch. 282, L. 1959.

- 74-604. Denial, suspension or revocation of licenses. (a) Renewal of a license originally granted under this act may be denied, or a license may be suspended or revoked by the superintendent on the following grounds: (1) Material misstatement of fact in the application for license; (2) willful failure to comply with any provision of this act relating to retail installment contracts; (3) defrauding any retail buyer to the buyer's damage; (4) fraudulent misrepresentation, circumvention or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.
- (b) If a licensee is a partnership, association or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed association or corporation, or any member of a licensed partnership, has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of

his employees while acting as his agent, if such licensee after actual knowledge of said acts retained the benefits, proceeds, profits or advantage accruing from said acts or otherwise ratified said acts.

- (c) No license shall be denied, suspended or revoked except after hearing thereon. The superintendent shall give the licensee at least ten (10) days' written notice, in the form of an order to show cause, of the time and place of such hearing by registered mail addressed to the principal place of business in this state of such licensee. The said notice shall contain the grounds of complaint against the licensee. Any order suspending or revoking such license shall recite the grounds upon which the same is based. The order shall be entered upon the records of the superintendent and shall not be effective until after thirty (30) days' written notice thereof given after such entry forwarded by registered mail to the licensee at such principal place of business. No revocation, suspension or surrender of any license shall impair or affect the obligation of any lawful retail installment contract acquired previously thereto by the licensee.
- (d) Any person, licensee, or applicant, considering himself aggrieved by an order of the superintendent may within thirty (30) days from the entry of the order complained of, apply for writ of review in accordance with the provisions of chapter 90 of Title 93 of the Revised Codes of Montana of 1947.

History: En. Sec. 4, Ch. 282, L. 1959.

- 74-605. Investigations and complaints. (a) The superintendent, or his duly authorized representatives, shall have the power to make such investigations as he shall deem necessary and, to the extent necessary for this purpose, he may examine such licensee or any other person and shall have the power to compel the production of all relevant books, records, accounts and documents.
- (b) Any retail buyer having reason to believe that this act relating to his retail installment contract has been violated may file with the superintendent a written complaint setting forth the details of such alleged violation and the superintendent, upon receipt of such complaint, may inspect the pertinent books, records, letters and contracts of the licensee and of the retail seller involved, relating to such specific written complaint.

History: En. Sec. 5, Ch. 282, L. 1959.

74-606. Powers of superintendent. (a) The superintendent shall adopt and promulgate such rules and regulations as shall be necessary to carry out the intent and purposes of this act. All rules and regulations of general application shall be filed in the office of the superintendent. A copy of every such rule or regulation shall be mailed to each licensee, postage prepaid, at least fifteen (15) days in advance of its effective date: Provided, however, the failure of a licensee to receive a copy of such rules or regulations shall not exempt him from the duty of compliance with such rules and regulations lawfully promulgated hereunder.

- (b) The superintendent shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter over which he has jurisdiction, control or supervision pertaining to this act. The superintendent shall have the power to administer oaths and affirmations to any person whose testimony is required.
- (c) If any person shall refuse to obey any such subpoena, or to give testimony, or to produce evidence as required thereby, any judge of the district court of the county in which the licensed premises are located may, upon application and proof of such refusal, make an order awarding process of subpoena or subpoena duces tecum for the witness to appear before the superintendent and to give testimony, and to produce evidence as required thereby. Upon filing such order, in the office of the clerk of the said court, the clerk shall issue process of subpoena, as directed, under the seal of said court, requiring the person to whom it is directed, to appear at the time and place therein designated.
- (d) If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the superintendent may apply to the judge of the court issuing such subpoena for an attachment against such person, as for a contempt. The judge, upon satisfactory proof of such refusal, shall issue an attachment, directed to any sheriff, constable or police officer, for the arrest of such person, and upon his being brought before such judge, proceed to a hearing of the case. The judge shall have power to enforce obedience to such subpoena, and the answering of any question, and the production of any evidence that may be proper by a fine, not exceeding one hundred dollars (\$100), or by imprisonment in the county jail, or by both fine and imprisonment, and to compel such witness to pay the costs of such proceeding to be taxed.

History: En. Sec. 6, Ch. 282, L. 1959.

- 74-607. Requirements and prohibitions as to retail installment contracts. (a) Each retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall be completed as to all essential provisions prior to the signing of the contract by the buyer. However, if a retail installment transaction is a sale of goods other than a motor vehicle where no title, lien or other security interest is retained or taken by the seller, then the retail installment contract need not be contained in a single document. In such cases, if the contract is contained in more than one document, then one such document may be an original document executed by the retail buyer applicable to purchases of goods or services to be made by the retail buyer from time to time and in such case such document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth all of the information required by this section and shall constitute the retail installment contract for each such purchase.
- (b) The printed portion of the contract, other than instructions for completion, shall be in at least eight (8) point type. The contract shall

contain the following notice in a size equal to at least ten (10) point bold type:

- 1. "Notice to the buyer. Do not sign this contract before you read it or if it contains any blank spaces.
  - 2. "You are entitled to an exact copy of the contract you sign.
- 3. "Under the law, you have the right to pay off in advance the full amount due and to obtain a partial refund of the finance charge."
- (c) If the contract covers the sale of a motor vehicle, it shall also contain, in a size equal to at least ten (10) point bold type, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included if that is the case.
- (d) The seller shall deliver to the buyer or mail to him at his address shown in the contract, a copy of the contract signed by the seller. Until the seller does so, a buyer who has not received delivery of the goods or been furnished the services shall have the right to rescind his agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract, or if such goods cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least ten (10) point bold type and, if contained in the contract, shall appear directly above the buyer's signature.
- (e) The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the goods sold or services furnished or to be furnished, and shall clearly state and describe any collateral security taken for the buyer's obligation.
- (f) The contract shall contain the following items: (1) The cash sale price of the goods or services; (2) the amount of the buyer's down payment, and whether made in money or goods, or partly in money and partly in goods, including a brief description of the goods traded in; (3) the difference between items one and two; (4) the amount, if any, included for insurance and other benefits if a separate charge is made therefor, specifying the types of coverage and benefits; (5) the amount of official fees; (6) the principal balance which is the sum of items three, four and five; (7) the amount of the finance charge; (8) the total amount of the time balance stated as one sum in dollars and cents, which is the sum of items six and seven, payable in installments by the buyer to the seller, the number of installments, the amount of each installment and the due date or period thereof.

The above items need not be stated in the sequence or order set forth; additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

(g) The amount, if any, included for insurance, which may be purchased by the holder of the contract, shall not exceed the applicable premiums chargeable in accordance with the rates filed with the insurance department of this state where such rates are required by law to be approved by said department. All such insurance shall be written by an

insurance company authorized to do business in this state and shall be countersigned by a duly licensed resident agent authorized to engage in the insurance business in this state. A buyer may be required to provide insurance on the goods at his own cost for the protection of the seller or holder, as well as the buyer, but such insurance shall be limited to insurance against substantial risk of loss, damage or destruction of the goods. Any other insurance may be included in a retail installment transaction at the buyer's expense only if contracted for voluntarily by the buyer. If such insurance for which such identified charge is made insures the life, safety or health of the buyer or his interest in the goods and is purchased by the holder, the holder shall within thirty (30) days after the execution of the retail installment contract send or cause to be sent to the buyer a policy or policies or certificate or certificates of insurance, written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and, if a policy, all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance, or, if a certificate, a summary thereof. The seller shall not decline existing insurance written by an insurance company authorized to do business in this state and the buyer shall have the privilege of purchasing insurance from an agent or broker of his own selection and of selecting his insurance company: Provided, however, that the insurance company shall be acceptable to the holder, which acceptance shall not be unreasonable or arbitrarily withheld, and further, that the inclusion of the cost of the insurance premium in the retail installment contract when the buyer selects his agent, broker or company, shall be optional with the seller.

- (h) If any insurance is canceled, or the premium adjusted, any refund of the insurance premium received by the holder, shall be credited to the final maturing installment of the contract except to the extent applied toward payment for a similar insurance protecting the interests of the buyer and the holder or either of them.
- (i) A buyer may transfer his equity in the goods at any time to another person upon agreement by the holder, but in such event the holder of the contract shall be entitled to a transfer of equity fee which shall not exceed fifteen dollars (\$15.00).
- (j) The holder may collect a delinquency charge on each installment in default for a period not less than ten (10) days in an amount not in excess of five per cent (5%) of each installment or five dollars (\$5.00), whichever is less or, in lieu thereof, interest after maturity on each such installment not exceeding the highest lawful contract rate. In addition to such delinquency charge, the contract may provide for the payment of attorneys' fees not exceeding fifteen per cent (15%) of the amount due and payable under such contract where such contract is referred for collection to an attorney not a salaried employee of the holder of the contract and for court costs and actual and reasonable out-of-pocket expenses incurred in connection with such delinquency.
- (k) No retail installment contract shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except

that, if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgment, conforming to the requirements of subsection (d) of this section, of delivery of a copy of a contract shall be conclusive proof of such delivery, that the contract when signed, did not contain any blank spaces except as herein provided, and of compliance with this section in any action or proceeding by or against a holder of the contract without knowledge to the contrary when he purchases the contract.

- (1) Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.
- (m) After payment of all sums for which the buyer is obligated under a contract, and upon written demand made by the buyer, the holder shall deliver or mail to the buyer, at his last known address, one or more good and sufficient instruments to acknowledge payment in full and shall release all security in the goods or in any collateral security.

History: En. Sec. 7, Ch. 282, L. 1959.

- 74-608. Finance charge limitation. (a) Notwithstanding the provisions of any other law, the finance charge included in a retail installment transaction shall not exceed the following schedule:
  - (1) As to motor vehicles:
  - Class 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made—seven dollars (\$7) per one hundred dollars (\$100) per year.
  - Class 2. Any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two (2) years prior to the year in which the sale is made—nine dollars (\$9) per one hundred dollars (\$100) per year.
  - Class 3. Any used motor vehicle not in class 2 and designated by the manufacturer by a year model more than two (2) years prior to the year in which the sale is made—eleven dollars (\$11) per one hundred dollars (\$100) per year.
  - (2) As to services and goods other than motor vehicles: (i) On so much of the principal balance as does not exceed three hundred dollars (\$300), eleven dollars (\$11), per one hundred dollars (\$100) per year; (ii) if the principal balance exceeds three hundred dollars (\$300), but is less than one thousand dollars (\$1,000), nine dollars (\$9) per one hundred dollars (\$100) per year on that portion over three hundred dollars (\$300); (iii) if

- the principal balance exceeds one thousand dollars (\$1,000), seven dollars (\$7) per one hundred dollars (\$100) per year on that portion over one thousand dollars (\$1,000).
- (b) Such finance charge shall be computed on the principal balance as determined under section 74-607(f) on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total time balance thereof is required to be paid in installments. A minimum finance charge of twenty dollars (\$20) may be charged on any retail installment transaction.
- (c) When a retail installment contract provides for payment, other than in equal successive monthly installments, the finance charge may be at a rate which will provide the same yield as is permitted on monthly payment contracts under subsections (a) and (b) hereof, having due regard for the schedule of payments in the contract.
- (d) Any sales finance company may purchase or acquire or agree to purchase or acquire from any seller any contract on such terms and conditions as may be agreed upon between them. Filing of the assignment, notice to the buyer of the assignment, and any requirement that the holder maintain dominion over the payments or the goods if repossessed shall not be necessary to the validity of a written assignment of a contract as against creditors, subsequent purchasers, pledgees, mortgagees and lien claimants of the seller. Unless the buyer has notice of the assignment of his contract, payment thereunder made by the buyer to the last known holder of such contract shall be binding upon all subsequent holders.

History: En. Sec. 8, Ch. 282, L. 1959.

74-609. Refunds on prepayment. Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay in full, at any time before maturity, the debt of any retail installment contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the finance charge as the sum of the monthly time balances beginning one (1) month after prepayment is made, bears to the sum of all the monthly time balances under the schedule of payment in the contract. Where the amount of credit is less than one dollar (\$1.00) no refund need be made.

History: En. Sec. 9, Ch. 282, L. 1959.

74-610. Refinancing retail installment contract. The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or installments, or defer payment or payments, or renew or restate the unpaid time balance of such contract, the amount of the installments and the time schedule therefor and may collect for such extension, deferment, renewal or restatement a refinance charge computed as follows: The holder may compute the refinance charge on the unpaid time balance to be extended, deferred, renewed or restated by adding to such unpaid time balance the cost for any insurance and

other benefits incidental to the refinancing plus any accrued delinquency and collection charges, after deducting any refund which may be due the buyer as for a prepayment pursuant to section 74-609, at the rate of the finance charge specified in section 74-608(a) and by reclassifying in the case of motor vehicles by its then year model, for the term of the refinancing agreement, but otherwise subject to the provisions of this act governing computation of the original finance charge. The provisions of this act relating to minimum finance charges under section 74-608(b) and an acquisition cost under section 74-609 shall not apply in calculating refinance charges on the contract extended, deferred, renewed or restated. If all unpaid installments are deferred for not more than two (2) months, the holder may at his election charge and collect for such deferment an amount equal to the difference between (a) the refund required for prepayment in full under section 74-609 as of the scheduled due date of the first deferred installment, and (b) the refund required for prepayment in full as of one (1) month prior to said date, times the number of months in which no scheduled payment is made.

History: En. Sec. 10, Ch. 282, L. 1959.

- **74-611. Penalties.** (a) Any person who shall knowingly violate any provision of this act or engage in the business of a sales finance company in this state without a license therefor as provided in this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months or both.
- (b) Any person violating sections 74-607 to 74-610, except as the result of an accidental and bona fide error of computation, shall be barred from recovery of any finance charge, delinquency or collection charge on the contract.

History: En. Sec. 11, Ch. 282, L. 1959.

74-612. Waiver. Any waiver of the provisions of this act shall be unenforceable and void.

History: En. Sec. 12, Ch. 282, L. 1959.



# TITLE 75

# SCHOOLS

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# CHAPTER 1

# STATE BOARD OF EDUCATION—COMPOSITION, POWERS AND DUTIES

Section 75-101. Membership.

75-102. Appointive members—term of office—vacancies.

75-103. Oaths.

75-104. Officers.

75-105. Quorum.

75-106. Meetings, per diem and expenses.

75-107. Powers and duties.

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**75-101.** (830) **Membership.** The state board of education shall consist of eleven members of which number the governor, state superintendent of public instruction, and attorney general shall be ex officio members.

History: En. Sec. 1, p. 158, L. 1893; re-en. Sec. 1510, Pol. C. 1895; re-en. Sec. 642, Rev. C. 1907; re-en. Sec. 100, Ch. 76, L. 1913; re-en. Sec. 830, R. C. M. 1921.

#### Retroactivity

No retroactive effect will be given to this act; it is not commanded by its context, terms, or manifest purpose. Falligan v. School District No. 1, 54 M 177, 179, 169 P 803.

#### References

In re Beck's Estate, 44 M 561, 581, 121 P 784, 1057.

#### Collateral References

Schools and School Districts 47. 78 C.J.S. Schools and School Districts 86.

47 Am. Jur. 316, Schools, §§ 29 et seq.

75-102. (831) Appointive members—term of office—vacancies. The governor shall appoint, by and with the advice and consent of the senate, the remaining eight (8) members of the board. Such appointments shall be made in the following manner: The appointees shall be equally divided between the first and second congressional districts of the state of Montana and shall be so selected that not more than four (4) of such members are affiliated with the same political party or organization. Upon the expiration of the term of any present member of the board, appointment shall be made in such manner as to carry into effect the foregoing provisions of this act.

The term of office of the appointive members of the board shall be eight (8) years and until their successors are appointed and qualified. Any appointment to fill a vacancy occurring before the expiration of the term of an incumbent shall be for the remainder of such term only. All appointments to fill vacancies shall be so made as to retain the then existing representation on the board as between congressional districts and political parties or organizations.

This amendment shall not affect the term of office of any present appointive member of the board, but all such members shall serve out their existing terms in the same way as though this act had not been passed.

All members hereafter appointed to said board shall be appointed for terms of eight (8) years, and said appointments shall be so arranged that the term of office of one (1) member shall expire each year; provided, however, that in order to carry out this requirement it shall be lawful upon the expiration of the term of office of existing members of the board to make appointment for shorter terms than eight (8) years, and provided, further, that all future appointments of members of the board shall be subject to adjustment in length of term to conform to any change made by law in the number of members of the board.

History: En. Sec. 2, p. 159, L. 1893; re-en. Sec. 1511, Pol. C. 1895; re-en. Sec. 643, Rev. C. 1907; amd. Sec. 101, Ch. 76, L. 1913; re-en. Sec. 831, R. C. M. 1921; amd. Sec. 1, Ch. 53, L. 1927; amd. Sec. 1, Ch. 101, L. 1941.

NOTE.—Since Sec. 7, Article VII of the Constitution controls over this section, when the governor makes appointment of a member to state board of education to fill vacancy during recess of senate, such appointee holds office until next meeting of senate. Opinions Atty. General, Vol. 19—Opinion 40.

75-103. (832) Oaths. The persons so appointed as members of the state board of education shall, before entering upon the duties of their office, take and subscribe the constitutional oath of office prescribed for civil officers, which shall be filed in the office of the secretary of state.

History: En. Sec. 3, p. 159, L. 1893; 644, Rev. C. 1907; re-en. Sec. 102, Ch. 76, re-en. Sec. 1512, Pol. C. 1895; re-en. Sec. L. 1913; re-en. Sec. 832, R. C. M. 1921.

75-104. (833) Officers. The governor shall be the president of said board and the superintendent of public instruction shall be the secretary thereof. The state treasurer shall be the treasurer of the board. The board may also elect a chairman from the appointed members, who shall serve in the absence of the governor, and such other officers as may be necessary for the effective administration of the university system.

History: En. Sec. 4, p. 159, L. 1893; re-en. Sec. 1513, Pol. C. 1895; re-en. Sec. 645, Rev. C. 1907; re-en. Sec. 103, Ch. 76, L. 1913; re-en. Sec. 833, R. C. M. 1921; amd. Sec. 1, Ch. 269, L. 1959.

#### References

State ex rel. Koch v. Barret, 26 M 62, 66, 66 P 504; In re Beck's Estate, 44 M 561, 581, 121 P 784, 1057; State ex rel. School District No. 29 v. Cooney, 102 M 521, 526, 59 P 2d 48.

75-105. (834) Quorum. A majority of said board shall constitute a quorum for the transaction of business.

History: En. Sec. 5, p. 159, L. 1893; 646, Rev. C. 1907; re-en. Sec. 104, Ch. 76, re-en. Sec. 1514, Pol. C. 1895; re-en. Sec. L. 1913; re-en. Sec. 834, R. C. M. 1921.

75-106. (835) Meetings, per diem and expenses. The board shall hold quarterly meetings at the state capitol or at any other town or city in the state of Montana in or near which may be located any institutions under its jurisdiction on the second Monday in April, July, September and December in each year, and may hold special meetings at any time and place it may direct. The president and secretary of the board may also call special meetings of said board at any time and place, if in their judgment

necessity requires it. The secretary of the board shall notify the members of all regular and special meetings. The members of the board, other than ex officio members shall receive fifteen (\$15.00) dollars per day each for each day in attendance on meetings of said board or in the performance of any duty or services as members of such board and necessary and actual expenses incurred, provided, however, that no one of such members shall receive more than five hundred (\$500.00) dollars per diem in any one (1) fiscal year. All expenses of the state board of education, including per diem and expenses of members and the salary and expenses of the executive secretary of the university of Montana incurred while transacting university business, shall be paid out of the appropriations made by the legislative assembly for said university.

History: En. Sec. 6, p. 159, L. 1893; re-en. Sec. 1515, Pol. C. 1895; re-en. Sec. 647, Rev. C. 1907; amd. Sec. 105, Ch. 76, L. 1913; amd. Sec. 1, Ch. 196, L. 1919;

re-en. Sec. 835, R. C. M. 1921; amd. Sec. 1, Ch. 146, L. 1929; amd. Sec. 1, Ch. 115, L. 1935; amd. Sec. 1, Ch. 158, L. 1945; amd. Sec. 1, Ch. 236, L. 1953.

**75-107.** (836) **Powers and duties.** The state board of education shall have power and it shall be its duty:

- 1. To have general control and supervision of the Montana state university, Montana state college, Montana school of mines, Montana state normal college, eastern Montana state normal school, and northern Montana college, all being units of the university of Montana. It is the purpose of this act that the said six (6) units of our university system shall be considered for all purposes one university. The state board of education shall serve ex officio as regents of the university of Montana and shall use and adopt this style in all its dealings therewith.
- 2. To adopt rules and regulations, not inconsistent with the constitution and the laws of this state, for its own government, and proper and necessary for the execution of the powers and duties conferred upon it by law.
- 3. To provide, subject to the laws of the state, rules and regulations for the government of the affairs of the state educational institutions named in this section.
- 4. To prescribe standards of promotion to the high school department of all public schools of the state, and to accredit such high schools as maintain the standards of work prescribed by the board on all such matters of promotion and accrediting. The board shall act upon recommendation given to it by the state superintendent of public instruction.
- 5. To grant diplomas to the graduates of all state educational institutions, where diplomas are authorized or now granted, upon the recommendation of the faculties thereof, and may confer honorary degrees, upon persons, other than graduates, upon the recommendation of the faculty of such institutions.
  - 6. To adopt and use, in the authentication of its acts, an official seal.
  - 7. To keep a record of its proceedings.
- 8. To make an annual report on or before the first day of January in each year, which may be printed under the direction of the state board of examiners.
- 9. To appoint and commission experienced teachers as instructors in county institutes.

- 10. To have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the institutions and colleges named in this section.
- 11. To receive from the state board of land commissioners, or other boards, or persons or from the government of the United States, any and all funds, incomes, and other property to which any of said institutions may be entitled, and to use and appropriate the same for the specific purpose of the grant or donation, and none other; and to have general control of all receipts and disbursements of any of said institutions.
- 12. To choose and appoint a president and faculty for each of the various state institutions named herein, and to fix their compensation. The board must appoint an executive secretary of the university of Montana and fix his term of office and salary and prescribe generally his duties. Said executive secretary shall not be a member of the board. The executive secretary of the university of Montana shall serve as the secretary for the board sitting as the university regents.
- 13. To appoint each two (2) years a budget committee composed of four (4) members selected from the appointive members of the board, whose duties shall be to review the budget requests presented by the institutions composing the university of Montana and to transmit such requests to the board together with recommendations thereon.
- 14. To confer upon the executive board of each of said institutions such authority relative to the immediate control and management, other than financial, and the selection of the faculty, teachers, and employees, as may be deemed expedient, and may confer upon the president and faculty such authority relative to the immediate control, and management, other than financial, and the selection of teachers and employees, as may by said board be deemed for the best interest of said institutions.

History: Ap. p. Sec. 7, p. 159, L. 1893; re-en. Sec. 1516, Pol. C. 1895; re-en. Sec. 648, Rev. C. 1907; amd. Sec. 1, Ch. 73, L. 1909; amd. Sec. 106, Ch. 76, L. 1913; Subd. 7, amd. Sec. 2, Ch. 196, L. 1919; re-en. Sec. 836, R. C. M. 1921; amd. by repealing Subd. 7, Ch. 131, L. 1923; amd. Sec. 2, Ch. 158, L. 1945; amd. Sec. 1, Ch. 92, L. 1951; amd. Sec. 2, Ch. 236, L. 1953; amd. Sec. 1, Ch. 266, L. 1959.

NOTE.—For legal names of units constituting the university of Montana, see sec. 75-402.

#### Cross-References

Authority concerning recreational programs and parks, sec. 62-214.

State orphans' home, control, sec. 10-103. State school for deaf and blind, duties, sec. 80-101 et seq.

State training school, control, secs. 38-803 to 38-805.

State vocational school for girls, duties, sec. 80-901 et seq.

# Actions Ex Contractu against State Board of Education

The state board of education may be sued for a breach of contract without the consent of the state for the action. Meens v. State Board of Education, 127 M 515, 267 P 2d 981, 983.

# Election to Approve Bonds Not Required

While Ch. 24, Laws Ex. Ses. 1933-34 (an emergency measure), authorizing construction of public works to alleviate unemployment and the borrowing of money for that purpose, provided for submission of indebtedness to electors, an election was not required where no part of the debt created was to be repaid from taxes levied. State ex rel. Dragstedt v. State Board of Education, 103 M 336, 340, 62 P 2d 330.

# Exclusive Control of Funds Derived from Land Grant

The state board of education is vested with exclusive power to receive and control the funds derived from lands granted the state for the use of its institutions of learning, among them the state normal

school and therefore is free from the limitations and restrictions of the constitution as to the expenditures of the ordinary revenues of the state, to wit, only on appropriations made by the legislature and on warrants drawn by the state auditor. State v. State Board of Education, 97 M 371, 379, 34 P 2d 515.

## Implied Powers

The power expressly granted to the state board of education to manage and control the business and finances of the state education institutions by this section, carries with it the implied power to do all things necessary and proper to the exercise of its general powers. State v. State Board of Education, 97 M 121, 133-141, 33 P 2d 516.

The state board of education, proceeding under Ch. 24, Ex. Ses. Laws 1933-34 (an emergency measure), continued in force until July 1, 1937 by Ch. 135, Laws 1935 and under chapters 79-83, R. C. M. 1935 (75-101 to 75-515) had implied authority to authorize the construction of a chemistry-pharmacy building at the state university with funds granted by the federal government in addition to those to be secured by a bond issue. State ex rel. Dragstedt v. State Board of Education, 103 M 336, 338, 62 P 2d 330.

# Mandamus to Accredit Three-Year High School

Court erred in granting writ of mandate to compel state board of education to accredit school as three-year high school before obtaining approval of superintendent of public instruction under section 75-4139, and under state board rule, in the absence also of authority of board of trustees or prior legal demand upon state board to accredit the school. (See also Art. XI, sec. 11,

Const.) State ex rel. School District No. 29 v. Cooney, 102 M 521, 525, 59 P 2d 48.

#### Pledge of Land Grant Income

Under the facts presented, and under prior decisions, a pledging of a portion of the income and interest from the land grant is permissible. State ex rel. Dragstedt v. State Board of Education, 103 M 336, 340, 62 P 2d 330. See also State ex rel. Wilson v. State Board of Education, 102 M 165, 172, 56 P 2d 1079.

## Rules and Regulations-Scope

A provision of the rules and regulations of the state board of education that the president of the state university shall report appointments and resignations of members of the faculty and other employees, does not authorize the president to accept the resignation of a professor of the institution, but merely requires him to report it to the state board. State ex rel. Phillips v. Ford, 116 M 190, 199, 151 P 2d 171.

#### References

State ex rel. Koch v. Barret, 26 M 62, 66, 66 P 504.

#### Collateral References

Schools and School Districts 47. 78 C.J.S. Schools and School Districts 86.

Title to buildings when school lands revert for nonuse for school purposes. 28 ALR 2d 564.

Infancy or incapacity as affecting notice required as condition of holding municipality or other political subdivision liable for personal injury. 34 ALR 2d 725.

Racial segregation in schools. 38 ALR 2d 1189.

75-108. Regulation of award of degrees. No person, corporation, association or institution shall issue or award any degree or similar literary honors as are usually granted by universities or colleges, without first having secured the approval of the state board of education of the state of Montana of the adequacy of the course of work or study for which such degree or other literary honor is offered; provided, however, that this shall not apply to any educational institution accredited by an educational accrediting association whose accrediting is found by said state board to be generally recognized by state and other universities in the United States.

History: En. Sec. 1, Ch. 14, L. 1939.

79 C.J.S. Schools and School Districts § 508 et seq.

#### Collateral References

Schools and School Districts 178.

75-109. Penalty. Any person, corporation, association or institution violating any of the provisions of this act shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 14, L. 1939.

# CHAPTER 2

## RESIDENCE HALLS AT STATE EDUCATIONAL INSTITUTIONS

Section 75-201 to 75-206. Repealed.

75-207. Pledged student fees at university of Montana—use.

75-208. Powers of regents of university of Montana over student housing facilities.

75-209. Title to real estate and improvements at university.

75-210. Bonding powers of regents.

75-211. State not to be charged.

75-212. Units of university as units for financing. 75-213. State funds—restriction on use for housing.

75-214. Previous contracts unimpaired.

75-215. Obligations under repealed laws unaffected.

# 75-201 to 75-206. (836.1 to 836.6) Repealed—Chapter 232, Laws of 1961.

Repeal

These sections (Secs. 1 to 6, Ch. 94, L. 1929; Secs. 1 to 5, Ch. 291, L. 1947; Secs. 1 to 5, Ch. 168, L. 1951; Secs. 1 to 6, Ch.

226, L. 1953; Secs. 1, 3 to 6, Ch. 186, L. 1955), relating to residence halls at state educational institutions, were repealed by Sec. 9, Ch. 232, Laws 1961.

75-207. Pledged student fees at university of Montana—use. (1) Student fees that have been pledged for the liquidation of obligations incurred for the purpose of constructing facilities at the units of the university of Montana are not tuition. These student fees shall not be used for paying obligations incurred after this act takes effect, but shall be used exclusively for:

- (a) The maintenance and repair of the existing facilities so financed.
- (b) The fulfillment of existing obligations and accelerated retirement of bonds.
- (2) Unpledged income from existing student housing facilities may be used for the financing of additional student housing facilities as provided by law.

History: En. Sec. 1, Ch. 158, L. 1961.

75-208. Powers of regents of university of Montana over student housing facilities. The regents of the university of Montana may:

- (1) Acquire, erect, equip, enlarge and improve from time to time at any unit of the university of Montana residence halls, dormitories or other student housing facilities.
- (2) Rent rooms or provide board, or both, in student housing facilities to students, officers, guests, and employees of the unit at rates that will insure a reasonable net income over operating expenses, debt service and necessary reserves.
- (3) Use the net income for repairs, replacements, and maintenance of existing student housing facilities and the erection of additional student housing facilities.
- (4) Exercise full control and management of the student housing facilities.

History: En. Sec. 1, Ch. 232, L. 1961.

75-209. Title to real estate and improvements at university. The title to all real estate and improvements acquired and erected under the provisions of this act shall be taken and held in the name of the state of

Montana, except that title to fixtures and equipment purchased on a time or installment basis may remain in the vendor until the latter has been paid in full.

History: En. Sec. 2, Ch. 232, L. 1961.

- **75-210.** Bonding powers of regents. In carrying out the above powers, the regents may:
  - (1) Borrow money and issue bonds or other securities.
- (2) For the repayment of money so borrowed, pledge the net income received from student housing facilities, income from grants of land and other income in the form of gifts, bequests, contributions and federal grants.
- (3) Pay interest from the corpus during construction and one year thereafter.
- (4) Sell bonds issued in the manner and for the price they determine, with the approval of the board of examiners.
- (5) Refund bonds previously issued and pay any redemption premium thereon.

History: En. Sec. 3, Ch. 232, L. 1961.

75-211. State not to be charged. No obligation created by this act shall ever become a charge against the state of Montana.

History: En. Sec. 4, Ch. 232, L. 1961.

75-212. Units of university as units for financing. In discharging obligations under the preceding sections, all of the student housing facilities at each unit of the university of Montana may be considered as one; but the rents and income available for student housing purposes at one unit shall not be used to discharge obligations created for student housing facilities at another unit. All such obligations, including principal and interest, shall be payable solely from the sources authorized in this act.

History: En. Sec. 5, Ch. 232, L. 1961.

75-213. State funds—restriction on use for housing. No state moneys except the sources of income specified in subsection (2) of section 75-210 shall be obligated or used for the purposes of this act, unless specifically directed by the legislative assembly.

History: En. Sec. 6, Ch. 232, L. 1961.

75-214. Previous contracts unimpaired. This act shall not impair any contract, indenture or agreement executed under previous laws.

History: En. Sec. 7, Ch. 232, L. 1961.

- 75-215. Obligations under repealed laws unaffected. No provision of this act shall affect or impair:
- (1) any contract or undertaking, or the financing or agreement to finance any contract or undertaking entered into under the provisions of the laws repealed by section 9 of this act prior to the effective date of this act, or:

(2) the issuance of bonds to finance facilities authorized or commenced under the laws repealed by section 9 of this act prior to the effective date of this act.

History: En. Sec. 8, Ch. 232, L. 1961.

NOTE.—Section 9, Ch. 232, Laws 1961 referred to above, repealed sections 75-201 to 75-206.

# CHAPTER 3

# CONTROL OF STATE EDUCATIONAL, CHARITABLE AND REFORMATORY INSTITUTIONS

Section 75-301. General control of state institutions.

75-302. Local executive boards—creation, residence and powers.

75-303. Officers-bond of treasurer.

75-304. Term of office.

75-305. Meetings.

75-306. Compensation of members.

75-307. Powers and duties.

75-308. Reports. 75-309. Vacancies.

75-310. Control of expenditures of state institutions.

75-311. Donations, grants, gifts.

75-312. Budget committee.

75-301. (841) General control of state institutions. The general control and supervision of the Montana state university, Montana state college, Montana school of mines, Montana state normal college, eastern Montana state normal school and northern Montana college, all being units of the university of Montana, the state vocational school for girls, state orphans' home, Montana state industrial school, Montana state training school and Montana state school for the deaf and blind are vested in the state board of education.

History: New section recommended by code commissioner, 1921; amd. Sec. 4, Ch. 160, L. 1925; amd. Sec. 1, Ch. 12, L. 1943; amd. Sec. 3, Ch. 158, L. 1945.

#### Cross-Reference

State vocational school for girls, executive board, sec. 80-904 et seq.

#### References

Meens v. State Board of Education, 127 M 515, 267 P 2d 981, 982.

# Collateral References

Colleges and Universities 7; Reformatories 2; States 82.

14 C.J.S. Colleges and Universities §§ 17-19; 76 C.J.S. Reformatories § 4; 81 C.J.S. States § 102.

75-302. (842) Local executive boards—creation, residence and powers. There shall be an executive board consisting of three (3) members, for each of said institutions named in the preceding section, excepting the Montana state industrial school, all of whom shall be appointed by the governor, by and with the advice and consent of the state board of education. The president of such institution shall not be eligible to appointment as a member of the board. At least two (2) of said members shall reside in the county where such institution is located. Said executive board shall have such immediate direction and control, other than financial, of the affairs of such institution as may be conferred on such board by the state board of education, subject always to the supervision and control of said

state board, provided this section shall not apply to the executive board for the state vocational school for girls.

History: En. Sec. 2, Ch. 73, L. 1909; re-en. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 842, R. C. M. 1921; amd. Sec. 4, Ch. 158, L. 1945; amd. Sec. 3, Ch. 242, L. 1953.

#### References

Meens v. State Board of Education, 127 M 515, 267 P 2d 981, 983.

#### Collateral References

Colleges and Universities 7; Reformatories 2; States 82.

14 C.J.S. Colleges and Universities §§ 17-19; 76 C.J.S. Reformatories § 4; 81 C.J.S. States § 102.

75-303. (843) Officers—bond of treasurer. The board, excepting the board of the Montana state industrial school herein provided for, shall elect a chairman and shall also appoint a secretary who may or may not be a member of said board. The treasurer of said board shall be treasurer of the institution, and such secretary and treasurer shall give bond with good and sufficient surety for the faithful performance of his duties as such, and for the faithful accounting for and paying over to, and for the use of said institution, all moneys received by him as treasurer. Said bond shall run to the state of Montana and shall be in such sum as may be designated by the state board of examiners, and when executed shall be approved by said board of examiners. The duties of the chairmen and secretaries of each of said executive boards shall be those usually performed by such officers, or which may be designated by the state board of education or the state board of examiners.

History: En. Sec. 3, Ch. 73, L. 1909; amd. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 843, R. C. M. 1921; amd. Sec. 4, Ch. 242, L. 1953.

14 C.J.S. Colleges and Universities §§ 17-19; 76 C.J.S. Reformatories § 7; 81 C.J.S. States § 102.

55 Am. Jur. 8, Universities and Colleges, §§ 12, 13.

# Collateral References

Colleges and Universities 7; Reformatories 3; States 82.

75-304. (844) Term of office. The three (3) members appointed by the governor shall, except as herein otherwise provided, hold office for the term of three (3) years from and after the third Monday in April of the year appointed, unless sooner removed by the governor or by the state board of education; providing that the appointments shall be so made that the term of office of one member shall expire each year. Such members shall qualify by making and filing their oath of office with the state board of education.

History: En. Sec. 10, Ch. 73, L. 1909; 844, R. C. M. 1921; amd. Sec. 5, Ch. 242, amd. Sec. 107, Ch. 76, L. 1913; re-en. Sec. L. 1953.

75-305. (845) **Meetings.** The executive board of each of said institutions shall meet in regular session at least once in each quarter, and monthly, or oftener, if the business of such institutions require it.

History: En. Sec. 5, Ch. 73, L. 1909; re-en. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 845, R. C. M. 1921.

75-306. (846) Compensation of members. The members of each of the executive boards shall receive such compensation for their services as shall be fixed by the state board of education, not exceeding the sum of five dollars (\$5.00) for each day actually spent in the discharge of their

official duties, and not exceeding the sum of one hundred and twenty-five dollars (\$125.00) in any one (1) year for each member, and such members shall also be reimbursed from the amount appropriated by the legislature for the maintenance and support of such institutions, all expenses necessarily incurred by them in discharge of their official duties as members of said boards.

History: En. Sec. 11, Ch. 73, L. 1909; 846, R. C. M. 1921; amd. Sec. 6, Ch. 242, re-en. Sec. 107, Ch. 76, L. 1913; re-en. Sec. L. 1953.

75-307. (847) Powers and duties. Said executive board shall have such immediate direction and control, other than financial, of the affairs of such institution as may be conferred on such board by the state board of education, subject always to the supervision and control of said state board. Said executive boards shall also have and exercise power and authority in contracting current expenses, and in auditing, paying, and reporting bills for salaries, or other expenses incurred in connection with such institutions; provided, the board of examiners may not limit the power of the executive board in making expenditures or contracts which in no single instance or for any single purpose exceed two hundred and fifty dollars.

History: En. Sec. 2, Ch. 73, L. 1909; re-en. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 847, R. C. M. 1921.

Actions against State Board of Education

The state board of education may be sued for a breach of contract without the consent of the state to the action. Meens

v. State Board of Education, 127 M 515, 267 P 2d 981, 983.

#### Collateral References

55 Am. Jur. 8, Universities and Colleges, \$\$ 12, 13.

Tort liability of public schools and institutions of higher learning. 160 ALR 7.

75-308. (848) Reports. Each of said executive boards shall, on or before the first Monday in June of each year, make a detailed statement and report of all its transactions and of the condition of the institutions, including the number of teachers, professors, and employees, with the salary or wages paid to each, and a detailed statement of all expenses and disbursements of such institution, which report shall contain such other information or recommendations as may be required by the state board of examiners, or by the state board of examiners and the state board of education, and the state board of education and the state board of examiners shall have authority to call for a report and statement from such executive boards at any time such board may deem it advisable. All such reports by such boards shall be made in triplicate, one copy shall be retained by such board, one copy shall be filed with the state board of education, and one copy with the state board of examiners.

History: En. Sec. 6, Ch. 73, L. 1909; amd. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 848, R. C. M. 1921.

75-309. (849) Vacancies. All vacancies occurring in the membership of any of said executive boards shall be filled by appointment by the governor, which appointments shall be referred to the state board of education at its first meeting thereafter for confirmation.

History: En. Sec. 2, Ch. 73, L. 1909; re-en. Sec. 107, Ch. 76, L. 1913; re-en. Sec. 849, R. C. M. 1921. 75-310. (850) Control of expenditures of state institutions. The state board of education pursuant to the terms of appropriations of the state legislature or of Congress or of gifts of donors, shall determine the need for all expenditures and control the purposes for which all funds of said institutions shall be spent. Subject to this control and to the provisions of the law dealing with the state purchasing agent, sections 82-1901 to 82-1923, the state board of examiners shall let all contracts, issue all bonds for any and all buildings or improvements, and shall audit all claims to be paid from all moneys; but said state board of examiners shall have authority to confer upon the executive boards of such institutions such power and authority in contracting current expenses, and in auditing, paying and reporting bills for salaries or other expenses incurred in connection with said institutions, as may be deemed by said state board of examiners to be to the best interest of said institution.

History: En. Sec. 13, Ch. 73, L. 1909; re-en. Sec. 110, Ch. 76, L. 1913; re-en. Sec. 850, R. C. M. 1921; amd. Sec. 1, Ch. 82, L. 1951.

#### References

State ex rel. Jones v. Erickson, 75 M 429, 457, 244 P 287.

# Collateral References

States ≈ 82. 81 C.J.S. States § 102.

75-311. (851) Donations, grants, gifts. All donations, grants, gifts, or devises, made to any of the institutions named herein, shall be made to such institution in its legal name, and if made to any officer or boards of such institution, the same shall be immediately transferred by such board or officer to such institution.

History: En. Sec. 111, Ch. 76, L. 1913; re-en. Sec. 851, R. C. M. 1921.

#### References

In re Beck's Estate, 44 M 561, 576, 121 P 784.

# Collateral References

Colleges and Universities 6(2); Reformatories 2; States 82.

14 C.J.S. Colleges and Universities § 12; 76 C.J.S. Reformatories § 6; 81 C.J.S. States § 102.

75-312. Budget committee. The state board of education shall have the power and it shall be its duty to appoint each two (2) years, a budget committee composed of four (4) members selected from the appointive members of the board, whose duties shall be to review the budget requests presented by the state vocational school for girls, state orphans' home, Montana state industrial school, Montana state training school and Montana state school for the deaf and blind, and to transmit such requests to the board together with recommendations thereon.

History: En. Sec. 1, Ch. 25, L. 1957.

# CHAPTER 4

#### UNIVERSITY OF MONTANA—UNITS COMPOSING

Section 75-401. What institutions constitute. 75-402. Legal names of units of univ

75-402. Legal names of units of university of Montana. 75-402.1. Change of name of schools at Dillon and Billings.

75-403. Control vested in state board of education—appointment of employees and faculty.

75-403.1. Office of chancellor abolished.

75-404. Diplomas and degrees.

Duties and powers of state board of education.

75-406. Seal of university—signing and attestation of diplomas and degrees.

75-407. Local executive board.

75-408. Powers and duties of presidents of several institutions. 75-409. No person to use the name of the university of Montana.

75-410. Refunding fare to students.

75-411.

Emergency declared. Contract for military training at university of Montana authorized. Selection of lands for use of university for biological station. 75-412.

75-413.

75-414. Execution of patent.

75-415. Declaration of need of scientific research through university units. Use of university units by federal agencies for scientific research.

75-401. (852) What institutions constitute. The state university at Missoula, the college of agriculture and mechanic arts at Bozeman, the school of mines at Butte, the normal college at Dillon, the eastern Montana state normal school at Billings and the northern agricultural and manual training school at Fort Assinniboine, and such departments of said institutions as may hereafter be organized, shall constitute the university of Montana, under the name and style of university of Montana.

History: En. Sec. 1, Ch. 92, L. 1913; re-en. Sec. 852, R. C. M. 1921; amd. Sec. 1, Ch. 6, L. 1927.

NOTE .-- For legal names of units constituting the university of Montana, see sec. 75-402.

#### Cross-Reference

Veterans, free tuition, sec. 77-901.

# Agricultural Experiment Station and Extension Service

The agricultural experiment station and the agricultural extension service are not parts of the agricultural college or component parts of the university of Montana; hence appropriations made for them cannot be charged to receipts from the mill and half levy for state purposes authorized for the maintenance of the university. State ex rel. Jones v. Erickson, 75 M 429, 441, 244 P 287.

#### References

Colleges.

State v. Brannon, 86 M 200, 212, 283 P 202, 67 ALR 1020; State ex rel. Henderson v. Dawson County, 87 M 122, 135, 286 P

#### Collateral References

Colleges and Universities 3. 14 C.J.S. Colleges and Universities §§ 4,

55 Am. Jur. 1 et seq., Universities and

Incorporated educational body as an institution belonging to the state. 65 ALR 1394.

75-402. (852.1) Legal names of units of university of Montana. legal names of the units of the university of Montana shall be and they are hereby fixed, designated and declared to be as follows:

Unit at Missoula, Montana State University.

Unit at Bozeman, Montana State College.

Unit at Butte, Montana School of Mines.

Unit at Dillon, Western Montana College of Education.

Unit at Billings, Eastern Montana College of Education.

Unit at Fort Assinniboine and Havre, Northern Montana College.

# History: En. Sec. 1, Ch. 28, L. 1935.

NOTE .- The names of the units at Dillon and Billings have been changed to conform to later enactment (Sec. 1, Ch. 30, Laws 1949; Sec. 75-402.1 of this code).

## Collateral References

Colleges and Universities 3. 14 C.J.S. Colleges and Universities §§ 4, 5.

75-402.1. Change of name of schools at Dillon and Billings. Hereafter, the Montana state normal college at Dillon will be known and designated as the western Montana college of education, and the eastern Montana state normal school at Billings will be known and designated as the eastern Montana college of education.

History: En. Sec. 1, Ch. 30, L. 1949.

75-403. (853) Control vested in state board of education—appointment of employees and faculty. The control and supervision of the university of Montana, as hereinbefore constituted, are vested in the state board of education, which must appoint a president and faculty for each of the various state institutions constituting the university of Montana, and such other officers, agents, and employees for said university of Montana and for its component state institutions as the state board may deem necessary. The board shall also prescribe the powers and duties of the president, faculty, officers, agents and employees of said institutions composing said university of Montana, and shall also establish for the government of the university of Montana and for its component institutions, and for the instruction given therein, such rules and regulations, not inconsistent with the laws of the state, as may be necessary for the proper government and control of the university of Montana and its said component institutions.

History: En. Sec. 2, Ch. 92, L. 1913; re-en. Sec. 853, R. C. M. 1921; amd. Sec. 7, Ch. 242, L. 1953.

# Employment Relationship with Faculty

The relationship between the state board of education and a professor of the state university is that of employee and employer, contractual in character. State ex rel. Phillips v. Ford, 116 M 190, 198, 151 P 2d 171.

### Resignations of Faculty Members

A provision of the rules and regulations of the state board of education that the president of the state university shall report appointments and resignations of members of the faculty and other employees, does not authorize the president to accept the resignation of a professor of the institution, but merely requires him to report it to the state board. State ex rel. Phillips v. Ford, 116 M 190, 199, 151 P 2d 171.

# Vested Right Created by Regulation

A regulation of the state board of education providing that reappointment of a professor after three years of service shall be deemed a permanent appointment, under which the board had functioned for some twenty-one years, was valid and clearly within its authority under Art. XI, sec. 11, Const., and this section; reappointment of a professor after such years of service was a permanent appointment, and his status not changed by the board's striking the regulation from its rules and regulations printed on the back of the sixth contract, because he came within the regulation upon execution of his fourth annual contract. State ex rel. Keeney v. Ayers, 108 M 547, 554, 92 P 2d 306, distinguished in 120 M 63, 78, 180 P 2d 472.

#### Collateral References

Colleges and Universities 7, 8. 14 C.J.S. Colleges and Universities §§ 17-19, 21-23.

75-403.1. Office of chancellor abolished. That the office of chancellor of the university of Montana, be, and the same hereby is abolished.

History: En. Sec. 1, Ch. 242, L. 1953.

75-404. (854) Diplomas and degrees. The state board of education shall have power, upon the recommendation of the faculty of any of the said component institutions, to grant diplomas and to confer the customary degrees on the graduates of all departments of said university of Montana, and such degrees and diplomas shall run from the university of Montana, specifying substantially that the graduate has completed the course of study of the university of Montana at the state university in Missoula, at the college of agriculture and mechanic arts in Bozeman, at the school of mines in Butte, at the state normal college in Dillon, at the eastern

Montana state normal school at Billings, or at the northern Montana agricultural and manual training school at Fort Assinniboine, as the case may be.

History: En. Sec. 3, Ch. 92, L. 1913; re-en. Sec. 854, R. C. M. 1921; amd. Sec. 2, Ch. 6, L. 1927.

NOTE.—For legal names of units constituting the university of Montana, see sec. 75-402.

# Collateral References

Colleges and Universities 9. 14 C.J.S. Colleges and Universities §§ 8, 25-29.

55 Am. Jur. 16, Universities and Colleges, § 24.

75-405. (855) Duties and powers of state board of education. It shall be the duty of the state board of education, in the exercise of its discretion, in the government and control of said university of Montana and its component institutions, as conferred upon it by the constitution of the state, to take such steps and prescribe such rules as may be necessary to prevent unnecessary duplications of courses of instruction in the various educational institutions composing the university of Montana; to investigate carefully the needs of each of said institutions with reference to buildings, equipment, and instruction. It shall be the duty of each member of said board to visit each of said educational institutions at least once each year, and at such other times as the board may deem necessary in order to acquaint himself of the needs and management of said institutions.

History: En. Sec. 4, Ch. 92, L. 1913; re-en. Sec. 855, R. C. M. 1921; amd. Sec. 5, Ch. 158, L. 1945.

#### Collateral References

Colleges and Universities 7.

14 C.J.S. Colleges and Universities \$\ 17-19.

75-406. (856) Seal of university—signing and attestation of diplomas and degrees. The state board of education shall adopt and cause to be prepared a seal for the university of Montana constituted as herein prescribed, which seal shall contain on the face thereof the words "University of Montana," which words shall be arranged on said seal as the state board of education may prescribe. Said seal shall remain in the custody of the secretary of the state board of education, and the same shall be affixed to all diplomas, and all other papers, instruments, and documents executed by the said university of Montana, which from their character or nature may require a seal.

History: En. Sec. 5, Ch. 92, L. 1913; re-en. Sec. 856, R. C. M. 1921; amd. Sec. 8, Ch. 242, L. 1953.

## Collateral References

Colleges and Universities 3. 14 C.J.S. Colleges and Universities §§ 4, 5

75-407. (857) Local executive board. There is also a local executive board for each of the institutions constituting the university of Montana. The powers and duties of said board are defined by sections 75-301 to 75-311.

History: New section recommended by code commissioner, 1921.

Collateral References

Colleges and Universities 7.

14 C.J.S. Colleges and Universities \$\\$ 17-19.

75-408. (858) Powers and duties of presidents of several institutions. The presidents of each of the educational institutions constituting the university of Montana, as herein prescribed, in connection with their respective executive boards of the several institutions, as now prescribed by

law, shall have the immediate direction, management, and control of their respective institutions, subject to the general supervision, direction and control of the state board of education. The president of a unit of the university of Montana shall not act as the executive secretary of the university system.

History: En. Sec. 6, Ch. 92, L. 1913; re-en. Sec. 858, R. C. M. 1921; amd. Sec. 6, Ch. 158, L. 1945; amd. Sec. 9, Ch. 242, L. 1953.

References

State ex rel. Ingersoll v. Clapp, 81 M 200, 207, 263 P 433.

75-409. (859) No person to use the name of the university of Montana. The state has the exclusive right to the use of the name "University of Montana," and no other institution of learning, or corporation must use the name of "University of Montana," or "Montana University," or like name, and the attorney general is required to bring an action in the name of the state against any person, association, or corporation using such or like name, for the purpose of dissolving the corporation, and recovering a sum not exceeding five hundred dollars, nor less than one hundred dollars, which is hereby made the penalty for a violation of the provisions of this section, from the person or association using such name.

History: En. Sec. 1542, Pol. C. 1895; re-en. Sec. 668, Rev. C. 1907; re-en. Sec. 859, R. C. M. 1921.

75-410. (860) Refunding fare to students. The state board of education, subject to such rules and regulations as said board may hereafter adopt thereon, is authorized to provide for the refund of the amount of necessary fare, less fifteen (\$15.00) dollars, paid by any student in regular attendance at any of the institutions of the university of Montana for traveling, once each year, from his place of residence, in the state of Montana by the most direct route of travel, to the said institution and return.

History: En. Sec. 1, Ch. 123, L. 1917; re-en. Sec. 860, R. C. M. 1921; amd. Sec. 1, Ch. 49, L. 1923; amd. Sec. 1, Ch. 41, L. 1925.

Collateral References

Colleges and Universities 5.9. 14 C.J.S. Colleges and Universities § 8, 5.99

#### References

Mills v. Stewart, 76 M 429, 443, 247 P 332, 47 ALR 424.

75-411. Emergency declared. The legislature finds and declares that a serious public emergency exists in this state, because of the requirement of the armed forces of the United States of America for facilities for the training of members of the armed forces and/or auxiliaries attached thereto, or any person or persons designated by the United States of America for training.

History: En. Sec. 1, Ch. 68, L. 1943.

75-412. Contract for military training at university of Montana authorized. Notwithstanding any inconsistent provision of any general, special or local law, the state board of examiners is authorized and directed to enter into arrangements and/or agreements with the proper department, bureau or agency of the United States of America for the training of members of the armed forces and/or auxiliaries attached thereto, or any person or

persons designated by the United States of America for training at any or all of the units of the university of Montana, and for that purpose is authorized and directed to expend any moneys appropriated to any such unit for the purpose of providing instructional services, dormitory facilities and board, and for purchase of needed equipment, materials and supplies, on the arrangement or agreement of said United States of America to repay any sums so expended, the providing of instructional services, dormitory facilities and board, and the purchase of needed equipment, materials and supplies to be made without regard to any laws relating to advertising for bids or competitive bidding, and when payment therefor has been received from the United States of America said payment shall revert to the fund from which original payment was made.

History: En. Sec. 2, Ch. 68, L. 1943.

75-413. Selection of lands for use of university for biological station. The governor is hereby authorized to make selection on behalf of the state of Montana of lands for the use of the university of Montana for biological station purposes, such lands to be received by the state of Montana in exchange for lot 1 of section 13, in township 24 north, range 21 west of the Montana principal meridian, as authorized by the act of Congress, approved December 13, 1944 (Public Law 475—78th Congress).

History: En. Sec. 1, Ch. 125, L. 1945.

75-414. Execution of patent. The governor, secretary of state and commissioner of state lands and investments, are hereby authorized to execute and deliver to the person or persons with whom the said exchange mentioned in section 75-413 shall have been effected, a patent of the state of Montana conveying the said lot 1 herein described, in fee simple, as authorized by said act of Congress, which patent shall be executed in the manner provided by section 81-932, but without reservations or exceptions.

History: En. Sec. 2, Ch. 125, L. 1945.

75-415. Declaration of need of scientific research through university units. The legislature finds and declares a serious public need exists in this state because of the requirements of the United States of America for scientific research by trained scientists to promote the general welfare and to provide an adequate defense to the nation; and the legislature therefor recognizes an urgent need for the state of Montana to aid in fostering, supporting and furthering scientific research through use of the units forming the university of Montana for such purpose.

History: En. Sec. 1, Ch. 22, L. 1947.

75-416. Use of university units by federal agencies for scientific research. Notwithstanding any inconsistent provisions of any general, special, or local law, the state board of examiners is authorized and directed to enter into arrangements, agreements, or contracts with the proper department, bureau or agency of the United States of America, for the use of the units forming the university of Montana for the purpose of scientific research; and from any moneys appropriated to any unit of the university, the state board of examiners is authorized and directed to expend moneys for the purpose of providing personnel, facilities, and instructional services,

and for the purchase of needed equipment, materials, and supplies, on the arrangement, agreement, or contract of said United States of America to repay any sums so expended, the providing of personnel, facilities and instructional services and the purchase of needed equipment, materials, and supplies to be made without regard to any laws relating to advertising for bids or competitive bidding; and when payment therefor has been received from the United States of America said payment shall revert to the fund from which original payment was made.

History: En. Sec. 2, Ch. 22, L. 1947.

# CHAPTER 5

# MONTANA STATE UNIVERSITY—LAW AND FORESTRY SCHOOLS

Section 75-501. Establishment and purpose of the state university.

75-502. The president—powers and duties.

75-503. Departments of the university.

75-504. Course of study.

75-505. Qualifications of students-military instruction. 75-506. Charges for tuition—waiver of nonresident fees.

75-506.1. Indians permitted to attend without payment of fees—selection.

75-507. Endowed professorships.

75-508. Appropriations for 75-509. Selection of site. Appropriations for support of university.

75-510. Law school at state university.

75-511. Official designation of law school.

75-512. Powers of state board of education over.

75-513. Forestry school at state university. 75-514. Official designation of forestry scho Official designation of forestry school.

75-515. Powers of state board of education with reference to.

75-501. (861) Establishment and purpose of the state university. The state educational institution located at Missoula and heretofore designated as the university of Montana shall hereafter be known and designated as the state university and shall constitute one of the component institutions of the university of Montana. The state university has for its object instruction of young men and women on equal terms in all the departments of science, in literature, the arts and industrial and professional education.

History: En. Sec. 1540, Pol. C. 1895; re-en. Sec. 666, Rev. C. 1907; amd. Sec. 1, Ch. 10, L. 1921; re-en. Sec. 861, R. C. M.

NOTE.—Section 75-402 provides that the legal name of the unit of the University of Montana located at Missoula shall be Montana State University.

75-502. (862) The president—powers and duties. The president of the university shall be the president of the general faculty, and of the special faculties of the several departments or colleges and the executive head of the institution in all its departments. As such officer he shall have authority, subject to the state board of education to give general direction to the instruction, practical affairs and scientific investigations of the several colleges, and as long as the interests of the institution require it, he shall be charged with the duties of one of the professorships. He shall perform the duties of the corresponding secretary for the university. He shall, annually, on or before the fifteenth day of June in each year, make a report to the state board of education, showing in detail the progress and condition of the university during the previous year, the number of professors and students in the several departments and classes, the nature and results of all important experiments and investigations, and such other matters, relating to the proper government, and educational work of the institution as he shall deem useful. It shall also be the duty of said president to furnish any special report when requested to do so by the state board of education or by the legislature.

History: En. Sec. 5, p. 174, L. 1893; re-en. Sec. 1547, Pol. C. 1895; re-en. Sec. 673, Rev. C. 1907; amd. Sec. 1, Ch. 44, L. 1911; re-en. Sec. 862, R. C. M. 1921.

References

State ex rel. Ingersoll v. Clapp, 81 M 200, 207, 263 P 433.

75-503. (863) Departments of the university. There shall be established the following colleges or departments of the state university, to wit:

- 1. A preparatory department.
- 2. A department of literature, science, and the arts.
- 3. Such professional and technical colleges as may, from time to time, be added thereto or connected therewith. The preparatory department may be dispensed with, at such rate and in such wise as may seem just and proper to the state board of education.

History: En. Sec. 6, p. 174, L. 1893; re-en. Sec. 1548, Pol. C. 1895; re-en. Sec. 674, Rev. C. 1907; re-en. Sec. 863, R. C. M. 1921.

NOTE.—The first paragraph of section 674, Revised Codes 1907, has been omitted in this code, it being a repetition of section 666, Revised Codes 1907 (75-501).

75-504. (864) Course of study. Such studies or courses of instruction shall be pursued in the preparatory department as shall best prepare the student to enter any of the regular colleges or departments of the university. The college or department of literature, science, and the arts shall embrace courses of instruction in mathematical, physical and natural sciences, with their application to the industrial arts; a liberal course of instruction in the languages, literature, history, and philosophy, and such other branches as the state board of education may prescribe. And, as soon as the income of the university will allow, and in such order as the demands of the public seem to require, the said courses of instruction in the sciences, literature, and the arts shall be expanded into distinct colleges or departments of the university, each with its own faculty and appropriate title.

History: En. Sec. 7, p. 175, L. 1893; 675, Rev. C. 1907; re-en. Sec. 864, R. C. M. re-en. Sec. 1549, Pol. C. 1895; re-en. Sec. 1921.

75-505. (865) Qualifications of students—military instruction. The university shall be open to students of both sexes, under such regulations and restrictions as the state board of education may deem proper. All ablebodied male students of the university may receive instruction and discipline in military tactics, the requisite arms for which shall be furnished by the state.

History: En. Sec. 8, p. 175, L. 1893; 676, Rev. C. 1907; re-en. Sec. 865, R. C. M. re-en. Sec. 1550, Pol. C. 1895; re-en. Sec. 1921.

75-506. (866) Charges for tuition—waiver of nonresident fees. Tuition shall ever be free to all students who shall have been residents of the state for not less than one year next preceding their admission in any unit of the

university of Montana, except in the law and medicine departments and for extra studies. The state board of education may prescribe rates for tuition for students enrolled in the law department or for extra studies and for students who have not been residents of the state for at least one year preceding enrollment. The state board of education is authorized to waive, at its discretion, nonresident tuition for selected and approved nonresident students. The number for whom tuition may be waived at any unit of the university shall not exceed in number two per cent (2%) of the total number of students enrolled at the unit; provided that no nonresident student may be admitted to the exclusion of any resident student.

History: En. Sec. 9, p. 175, L. 1893; re-en. Sec. 1551, Pol. C. 1895; re-en. Sec. 677, Rev. C. 1907; re-en. Sec. 866, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1947.

## Cross-References

Free to graduates of certain corrective state institutions, sec. 10-110.

Free tuition for veterans, sec. 77-901.

# Exaction of Students' Union Fee Not Prohibited

The provision of this section that tuition shall be free to resident students at the state educational institutions does not bar the state board of education from collecting a students' union fee, as a condition precedent to entry, to assist in creating a fund out of which a contemplated bond issue to defray the expenses of the erection of a students' union building was to be paid, "tuition" not embracing the principal purposes for which the building is intended to be used. State v. State Board of Education, 97 M 121, 133, 33 P 2d 516.

#### Collateral References

Colleges and Universities. 9.
14 C.J.S. Colleges and Universities §§ 8,
25-29.

75-506.1. Indians permitted to attend without payment of fees—selection. Any person of one-fourth  $(\frac{1}{4})$  Indian blood or more who shall receive a diploma and who shall have completed the regular course of a four-year accredited high school or federal Indian school in Montana, and shall have shown evidence of studious and industrious habits, shall be entitled, upon the recommendation of the state board of education, to enroll in any of the units of the university of Montana for four (4) years without the payment of fees required of students attending such institutions. The number of such Indians chosen each year shall not exceed twenty-four (24), of whom at least six (6) shall be enrolled for the purpose of training to become teachers. Rules and regulations governing the selection of these pupils shall be formulated by the state board of education and the state superintendent of public instruction is hereby designated as the agent of the board in carrying out this act.

History: En. Sec. 1, Ch. 108, L. 1951; amd. Sec. 1, Ch. 87, L. 1961.

Collateral References Indians©=8. 42 C.J.S. Indians § 23.

75-507. (867) Endowed professorships. Any person contributing a sum not less than fifteen thousand dollars shall have the privilege of endowing a professorship in the university, or any department thereof, the name and object of which shall be designated by the state board of education.

History: En. Sec. 10, p. 175, L. 1893; 678, Rev. C. 1907; re-en. Sec. 867, R. C. re-en. Sec. 1552, Pol. C. 1895; re-en. Sec. M. 1921.

75-508 SCHOOLS

#### References

#### Collateral References

In re Beck's Estate, 44 M 561, 582, 121 P 784, 1057. Colleges and Universities 8.

14 C.J.S. Colleges and Universities \$\{\}\ 21-23.

**75-508.** (868) **Appropriations for support of university.** For the support and endowment of the university there is annually and perpetually appropriated:

- 1. The university fund income, and all other sums of money appropriated by law to the university fund income.
  - 2. All tuition and matriculation fees.
- 3. All such contributions as may be derived from public or private bounty.

The entire income of all such funds shall be placed at the disposal of the state board of education, by transfer to the treasurer of said board, and shall be kept separate and distinct from the accounts of the state and all other funds, and shall be used solely for the support of the aforesaid colleges and departments of the university or those connected therewith. But all means derived from other public or private bounty shall be exclusively devoted to the specific objects for which they shall have been designated by the donor.

History: En. Sec. 11, p. 175, L. 1893; re-en. Sec. 1553, Pol. C. 1895; re-en. Sec. 679, Rev. C. 1907; re-en. Sec. 868, R. C. M. 1921.

#### Collateral References

Colleges and Universities € 6(1). 14 C.J.S. Colleges and Universities § 10.

#### References

In re Beck's Estate, 44 M 561, 582, 121 P 784, 1057.

(869) **Selection of site.** It shall be the duty of the state board of education within ninety days from the date of the passage of this act, if then organized, but if not organized then within ninety days from the organization of the said board, to select the site for the definite and permanent location of said state university, which site shall be within three miles of the city limits of the city of Missoula; and they shall, at once, take steps or proceedings for procuring the title to the tract or tracts of land so selected by them, and they may, and are hereby empowered to enter into contracts, in the name of the state of Montana, for the purchase of said tract or tracts of land so selected, and may execute such obligations for the payment of the same as will mature when the probable income of the university fund will pay for the same. The state board of education are [is] hereby authorized and empowered to accept, in the name of the state of Montana, such gifts of land and moneys as may be tendered for a university site or to aid in the purchase of said site; and they shall take the proper and necessary conveyances of said tract or tracts of land in the name of the state; provided, that if such gifts consist of money only or money and land, and the land be not sufficient in amount or not appropriate for a university site, then they shall appropriate such gifts to the payment of said site, and if there be a surplus the same to become a part of the university fund; provided, that said tract of land shall not be less than forty acres in extent.

History: En. Sec. 12, p. 176, L. 1893; re-en. Sec. 1554, Pol. C. 1895; re-en. Sec. 680, Rev. C. 1907; re-en. Sec. 869, R. C. M. 1921.

# Collateral References

Colleges and Universities ≈ 3, 6(1-4). 14 C.J.S. Colleges and Universities §§ 4, 5, 10-13.

# Compiler's Note

The bracketed word "is" was inserted by the compiler.

75-510. (872) Law school at state university. There is hereby created and established in the state and located at the city of Missoula, a law school, as a department of the state university.

History: En. Sec. 1, Ch. 31, L. 1911; re-en. Sec. 872, R. C. M. 1921.

## Collateral References

Colleges and Universities \$3. 14 C.J.S. Colleges and Universities §§ 4,

**75-511.** (873) **Official designation of law school.** That said law school shall be known and designated as "The Law Department of the State University."

History: En. Sec. 2, Ch. 31, L. 1911; re-en. Sec. 873, R. C. M. 1921.

75-512. (874) Powers of state board of education over. The state board of education is hereby empowered and given authority to make all necessary rules and regulations with reference to the conduct and management of the said law school; to map out and provide for the courses of study to be pursued by students attending said law school; to obtain and provide for necessary quarters, equipment, and books therefor, and to retain and hire the necessary professors and instructors to instruct the students therein.

History: En. Sec. 3, Ch. 31, L. 1911; re-en. Sec. 874, R. C. M. 1921.

75-513. (875) Forestry school at state university. There is hereby created and established in this state and located at the city of Missoula, a forestry school, as a department of the state university.

History: En. Sec. 1, Ch. 131, L. 1913; re-en. Sec. 875, R. C. M. 1921.

**75-514.** (876) **Official designation of forestry school.** That said forestry school shall be known and designated as "The Department of Forestry of the State University."

History: En. Sec. 2, Ch. 131, L. 1913; re-en. Sec. 876, R. C. M. 1921.

75-515. (877) Powers of state board of education with reference to. The state board of education is hereby empowered and given authority to make all necessary rules and regulations with reference to the conduct and management of the said forestry school; to map out and provide for the courses of study to be pursued by students attending said forestry school; to obtain and provide for necessary quarters, equipment, and books therefor, and to retain and hire the necessary professors and instructors to instruct the students therein.

History: En. Sec. 3, Ch. 131, L. 1913; re-en. Sec. 877, R. C. M. 1921.

# CHAPTER 6

## MONTANA SCHOOL OF MINES—STATE BUREAU OF MINES AND GEOLOGY

Section 75-601. School of mines, establishment and objects.

75-602. Control and management. 75-603. Qualifications of students.

75-604. Fees of professors.

75-605. Establishment of the Montana state bureau of mines and geology.

75-606. Appointment of mining engineer, assistants and employees.

75-607. Objects and duties of bureau.

75-608. Reports to legislature of progress and condition of bureau.

75-609. Printing and distribution of reports. 75-610. Disposition of mineral specimens.

75-611. Oath of office of director and assistants.

75-601. (878) School of mines, establishment and objects. A school of mines of Montana is hereby established and located at Butte, and has for its object instruction and education in chemistry, metallurgy, mineralogy, geology, mining, milling, engineering, mathematics, mechanics, drawing, the laws of the United States, and of the state in reference to mining and the rights and duties of citizens in relation thereto.

History: En. Sec. 1570, Pol. C. 1895; re-en. Sec. 689, Rev. C. 1907; re-en. Sec. 878, R. C. M. 1921.

ments. Section 75-402 provides that the legal name of the unit of the University of Montana located at Butte shall be Montana School of Mines.

NOTE.—The latter part of original section omitted to conform to later enact-

**75-602.** (879) **Control and management.** The control and management of the state school of mines is vested in the state board of education and in a local executive board.

History: New section recommended by code commissioner, 1921.

75-603. (880) Qualifications of students. The said school of mines shall be open and free for instruction to all bona fide residents of this state without regard to sex or color, and, with the consent of the state board of education, students from other states or territories may receive an education thereat, upon such terms and at such rates of tuition as the board may prescribe.

History: En. Sec. 8, p. 178, L. 1893; re-en. Sec. 1579, Pol. C. 1895; re-en. Sec. 698, Rev. C. 1907; re-en. Sec. 880, R. C. M. 1921.

#### Collateral References

Colleges and Universities 5. 14 C.J.S. Colleges and Universities §§ 8, 25-29.

75-604. (881) Fees of professors. It shall be lawful for the professor or president of the school of mines, who shall be appointed by the state board of education, to charge and collect such reasonable fees for any and all assays and analyses made by them, as the said board may prescribe, an account of which shall be kept by said president and paid over monthly to the treasurer of said school of mines, which shall become a part of the school of mines fund.

History: En. Sec. 16, p. 179, L. 1893; 705, Rev. C. 1907; re-en. Sec. 881, R. C. M. re-en. Sec. 1587, Pol. C. 1895; re-en. Sec. 1921.

75-605. (882) Establishment of the Montana state bureau of mines and geology. There is hereby established in the Montana state school of mines

a department to be known as the Montana state bureau of mines and geology, which shall be under the direction of the state board of education.

History: En. Sec. 1, Ch. 161, L. 1919; re-en. Sec. 882, R. C. M. 1921; amd. Sec. 1, Ch. 95, L. 1929.

75-606. (883) Appointment of mining engineer, assistants and employees. The state board of education shall have power and it shall be its duty to appoint a qualified mining engineer as the director of the said bureau, and to appoint such assistants and employees as may be necessary, and to fix the compensation of all persons connected with the said bureau.

History: En. Sec. 2, Ch. 161, L. 1919; re-en. Sec. 883, R. C. M. 1921.

- 75-607. (884) Objects and duties of bureau. The bureau shall have for its object and duties the following:
- 1. To collect, to compile, and to publish statistics relative to Montana geology, mining, milling and metallurgy.
- 2. To collect typical geological and mineral specimens and samples of products; to collect photographs, models, and drawings of appliances used in the mines, mills and smelters of Montana.
- 3. To collect a library and a bibliography of literature pertaining to or useful for the progress of geology, mining, milling, and smelting in Montana.
- 4. To study the geological formations of the state, with special reference to their economic mineral resources, both metallic and nonmetallic.
- 5. To examine the topography and physical features of the state with reference to their practical bearing upon the occupation of the people.
- 6. To study the mining, milling, and smelting operations carried on in the state, with special reference to their improvement.
- 7. To prepare and to publish bulletins and reports, with necessary illustrations and maps, which shall embrace both a general and a detailed description of the natural resources and geology, mines, mills and reduction plants of the state.
  - 8. To make qualitative examinations of rocks and mineral samples.
- 9. To consider such other scientific and economic problems as in the judgment of the state board of education are of value to the people of the state.
- 10. To communicate special information of Montana geology, mining and metallurgy.
- 11. To co-operate with the other departments of the university of Montana, with the state mine inspector, and with other departments of the state government as may be mutually beneficial; and to co-operate with the United States geological survey and with the United States bureau of mines, in accordance with the regulations of those institutions.
- 12. It shall also be the duty of the bureau of mines and geology, upon the request of the department of state lands and investments, to make ex-

aminations of state lands with regard to their geological formation and structure and as to all features relating to the character, extent and probable value of mineral deposits therein, including oil and gas; provided, however, that these services by the bureau shall be limited to the time that its personnel has available for such work in addition to its duties as defined in the preceding sections. Written reports shall be prepared of the examinations made.

Subject to the same limitations and conditions as above enumerated, the bureau of mines and geology shall carry on field examinations for other branches and agencies of the government of the state.

Traveling expenses incurred by the examiner, including meals, lodging and incidental expenses, shall be paid by the department requesting the examination from available appropriations upon the presentation of claims in the ordinary form.

History: En. Sec. 3, Ch. 161, L. 1919; re-en. Sec. 884, R. C. M. 1921; amd. Sec. 1, Ch. 58, L. 1937.

Collateral References
Mines and Minerals \$\infty 86.
58 C.J.S. Mines and Minerals \\$ 229.

75-608. (885) Reports to legislature of progress and condition of bureau. The state board of education shall cause to be prepared a report to the legislative assembly before each regular session thereof, showing the progress and condition of the bureau, together with such other information as may be deemed necessary or as the legislative assembly may require.

History: En. Sec. 4, Ch. 161, L. 1919; re-en. Sec. 885, R. C. M. 1921.

Collateral References
Colleges and Universities 7.
14 C.J.S. Colleges and Universities 18.

75-609. (886) Printing and distribution of reports. The regular and special reports of the bureau, with proper illustrations and maps, shall be printed and distributed as the state board of education may direct, and as the interests of the state and of science and industry may demand.

History: En. Sec. 5, Ch. 161, L. 1919; re-en. Sec. 886, R. C. M. 1921.

Collateral References
Colleges and Universities 7.
14 C.J.S. Colleges and Universities \$18.

75-610. (887) Disposition of mineral specimens. All materials collected, after having served the purposes of the bureau, shall be deposited either in the state museums or in the collections of the state school of mines, and duplicates of representative material shall be distributed to the various educational institutions of the state, in such a manner as to be of the greatest advantage to the educational interests of the state.

History: En. Sec. 6, Ch. 161, L. 1919; re-en. Sec. 887, R. C. M. 1921.

75-611. (888) Oath of office of director and assistants. The director of the bureau and his assistants shall take an oath to perform all the services required of them under this act, and to guard carefully all confidential information accumulated in the progress of their work; to refrain from any pecuniary speculation or remunerative private work based upon any knowledge of a commercial or economic nature acquired in the pursuit of their duties, until said knowledge or information shall have been fully

published and submitted to the people of the state; and to turn into the bureau as state property all correspondence, notes, illustrations, and data of any kind accumulated by them in performing the work of the bureau.

History: En. Sec. 7, Ch. 161, L. 1919; re-en. Sec. 888, R. C. M. 1921.

Collateral References

Colleges and Universities 7.

14 C.J.S. Colleges and Universities § 17.

# CHAPTER 7

# MONTANA STATE COLLEGE—MONTANA WOOL LABORATORY -AGRICULTURAL EXPERIMENT STATIONS

Section 75-701. Establishment and objects. 75-702. Control and management. 75-703. Agricultural experiment station. 75-704. Management of station. 75-705. Acceptance of grant.75-706. Designation of station as beneficiary. 75-707. Acceptance of certain acts of Congress. 75-708. Same. 75-709. Treasurer of executive board of agricultural college.
75-710. Establishment of experiment substation in horticulture.
75-710.1. Change of name of experimental station in horticulture. 75-710.2. Function of branch experiment station—employment of assistants. 75-710.3. Authority to accept donations of land suitable for experimental pur-75-710.4. Authority to accept donations of money, implements, livestock, etc. 75-711. Experiment substation located in Fergus county. 75-712. Authority of governor to accept site. 75-713. Acceptance of donations of money and material. 75-714. State wool laboratory established at state college.
75-715. Name.
75-716. Supervision—director of agricultural experiment station.
75-717. Advisory committee created—members, how selected—terms—meetings-per diem. 75-718. Director may promulgate rules and regulations. 75-719. Director to employ help—travel expense—publication. 75-720. 75-721. Collection, samples of wool. Fees paid for testing service. 75-722. Co-operation with United States department of agriculture-system of records-receipt and disposition of moneys. 75-723. Appropriation—disposal of moneys received by laboratory. 75-724. 75-725. Establishment of northwestern Montana branch station. Authority to accept donation or donations of land. 75-726. Authority to accept donations of money and material. 75-727. Acceptance by state of Huntley branch experiment station. 75-728. Operation of station.
75-729. Eastern Montana branch experiment station.
75-730. Acceptance of land donations authorized. Eastern Montana branch experiment station established. 75-731. Acceptance of money and material authorized.

75-732. Coal utilization experiment project—purpose.

Establishment of project.

75-733. 75-734. Supervision and responsibility of project-reservation to state of patents.

75-735. Purchase of sites or experimental farms-money for.

75-736. Moneys apportioned from endowment funds not to be applied towards buildings.

75-737. Approval and essentiality of sites or experimental farms.

75-738. Limitation on total amount expended for sites or experimental farms.

75-701. (889) Establishment and objects. The college of agriculture and mechanic arts of the state of Montana is established and located at the city of Bozeman, or within three miles of the corporate limits of said city, 75-702 SCHOOLS

upon such tract or tracts of land containing in the aggregate not less than eighty acres, and as much more as shall be selected by the state board of education, as hereinafter provided; and said college has for its leading objects and purposes, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the state board of education, and any subordinate boards by such state board appointed, may prescribe.

History: En. Sec. 1, p. 171, L. 1893; re-en. Sec. 1622, Pol. C. 1895; re-en. Sec. 732, Rev. C. 1907; re-en. Sec. 889, R. C. M. 1921.

NOTE.—Section 75-402 provides that the legal name of the unit of the University of Montana located at Bozeman shall be Montana State College.

#### References

In re Beck's Estate, 44 M 561, 582, 121 P 784, 1057; State ex rel. Jones v. Erickson, 75 M 429, 447, 244 P 287.

75-702. (890) Control and management. The control and management of the college of agriculture and mechanic arts is vested in the state board of education and in a local executive board.

History: New section recommended by code commissioner, 1921.

#### Collateral References

Colleges and Universities 3.

14 C.J.S. Colleges and Universities §§ 4,

55 Am. Jur. 1 et seq., Universities and Colleges.

Incorporated educational body as an institution belonging to the state. 65 ALR 1394.

#### Collateral References

Colleges and Universities 7.

14 C.J.S. Colleges and Universities \$\\$17-19.

75-703. (891) Agricultural experiment station. There is also located and established on the land selected by the state board of education, in connection with said agricultural college, and under its direction, an agricultural experiment station, to aid in acquiring and diffusing among the people of the state of Montana useful and practical information on subjects connected with agriculture, and to promote scientific investigation and experiments respecting the principles and application of agricultural science, which experiment station is established under and by virtue of the authority contained in the act of Congress, entitled "An act to establish experimental stations in connection with the colleges established in the several states under the provisions of an act approved July 2, 1862, and the said acts supplementary thereto," approved March 2, 1887, and the provisions, donations, and benefits contained in said act of Congress, and in all other acts of Congress relating to agricultural experimental stations and agricultural colleges, now in force, and all acts supplementary thereto, or amendatory thereof, are by the state of Montana hereby accepted and adopted.

History: En. Sec. 7, p. 172, L. 1893; re-en. Sec. 1628, Pol. C. 1895; re-en. Sec. 738, Rev. C. 1907; re-en. Sec. 891, R. C. M. 1921.

#### References

State ex rel. Koch v. Barret, 26 M 62, 64, 66 P 504; State ex rel. Jones v. Erickson, 75 M 429, 447, 244 P 287.

#### Collateral References

Colleges and Universities € 7. 14 C.J.S. Colleges and Universities §§ 17-19. 75-704. (892) Management of station. Said agricultural experiment station is hereby placed under the supervision and control of the state board of education and the executive or subordinate board or authority who may be by the governor, by and with the consent and advice of said state board of education, appointed.

History: En. Sec. 8, p. 173, L. 1893; 739, Rev. C. 1907; re-en. Sec. 892, R. C. M. re-en. Sec. 1629, Pol. C. 1895; re-en. Sec. 1921.

75-705. (893) Acceptance of grant. That the state of Montana hereby assents to the provisions of an act of Congress entitled "An act to provide for an increased annual appropriation for agricultural experiment stations and regulating the expenditure thereof," approved March 16, 1906, and hereby consents to receive the benefits thereof in the manner and form and for the purposes in said act intended and provided.

History: En. Sec. 1, Ch. 64, L. 1907; Sec. 740, Rev. C. 1907; re-en. Sec. 893, R. C. M. 1921. Collateral References
Colleges and Universities € 5(5).
14 C.J.S. Colleges and Universities § 14.

75-706. (894) Designation of station as beneficiary. Until otherwise provided by law the agricultural experiment station, now established at Bozeman, Gallatin county, state of Montana, shall be the beneficiary of the funds in said act mentioned, and shall use and disburse said funds only for the purposes and in the manner provided in said act. The treasurer of the executive board of the agricultural college and agricultural experiment station, at said city of Bozeman, is hereby authorized to receive and shall be the custodian of said funds, and he shall account for said funds and make reports to the secretary of agriculture, as required by said act of Congress.

History: En. Sec. 2, Ch. 64, L. 1907; Sec. 741, Rev. C. 1907; re-en. Sec. 894, R. C. M. 1921. Collateral References
Colleges and Universities € 5(5).
14 C.J.S. Colleges and Universities § 14.

75-707. (895) Acceptance of certain acts of Congress. That the state of Montana hereby accepts and assents to the terms and provisions of the act of Congress, approved May 8, 1914, entitled: "An act to provide for co-operative agricultural extension work between the agricultural colleges in the several states receiving the benefits of an act of Congress approved July second, eighteen hundred and sixty-two, and of act supplementary thereto, and the United States department of agriculture."

History: En. Sec. 1, Ch. 19, L. 1915; re-en. Sec. 895, R. C. M. 1921.

References
State ex rel. Jones v. Erickson, 75 M
429, 447, 244 P 287.

75-708. (896) Same. The president of the agricultural college of the state of Montana is hereby authorized to enter into all necessary agreements with the secretary of agriculture of the United States, relative to the receipt and expenditures of all moneys paid to the state of Montana, or to such agricultural college under the provisions of said act, and to receive and expend such money in accordance with the provisions of said act of Congress and the agreement so made with said secretary of agriculture.

History: En. Sec. 2, Ch. 19, L. 1915; re-en. Sec. 896, R. C. M. 1921.

75-709. (897) Treasurer of executive board of agricultural college. The treasurer of the executive board of the college of agriculture and mechanic arts of Montana shall have the authority to receive from the treasurer of the state of Montana the cash appropriation received from the United States by authority of the act of Congress of August 30, 1890 (26 Statutes at Large, p. 417), known as the second Morrill Act, and the act of Congress of March 4, 1907 (Statutes at Large, p. 1281), known as the Nelson Amendment. And such cash appropriation shall be expended by the executive board of said college, under the general supervision of the state board of education, but only for the purpose for which the same is appropriated by Congress.

The treasurer of said executive board of said college shall also have the authority to receive all moneys appropriated by the act of Congress of March 16, 1906 (34 Statutes at Large, p. 63), entitled "An act to provide for and increase the annual appropriation for agricultural experiment stations, and regulating the expenditures thereof," and such money shall be expended by said executive board under the supervision and direction and control of the state board of education in the manner and for the purpose designated in said act of Congress, and as required by section 894 of this code. The treasurer of said college shall, on or before the first day of September of each year, make a detailed statement of the amounts received and disbursed under the provisions of the act of Congress of March 30, 1890, and of March 4, 1907, and shall report the same to the secretary of agriculture of the United States and to the secretary of the interior of the United States, as required by said acts of Congress, and shall file a duplicate thereof with the state board of examiners of the state of Montana on or before the tenth day of September of each year. Said treasurer shall also make a detailed statement of the amounts of money received and disbursed under the act of Congress of March 16, 1906, which reports shall be filed with the state board of examiners on or before the tenth day of September of each year, and shall also make such reports to the officers or departments of the United States as are now or may hereafter be required by the laws of the United States.

History: En. Sec. 109, Ch. 76, L. 1913; re-en. Sec. 897, R. C. M. 1921.

75-710. (898) Establishment of experiment substation in horticulture. The executive board of the Montana college of agriculture and mechanic arts is hereby authorized and directed to establish a substation for the purpose of carrying on experimental work in horticulture, said station to be located at such point in the state of Montana as said board may select; provided, however, that the citizens or county wherein said substation is located shall donate to the state and give in fee simple not less than fifteen acres of suitable land, including a perpetual water right for the same.

History: En. Sec. 1, Ch. 146, L. 1907; Sec. 756, Rev. C. 1907; re-en. Sec. 898, R. C. M. 1921.

NOTE.—The horticultural substation located near Corvallis in Ravalli County was established by authority of the foregoing section.

References

In re Beck's Estate, 44 M 561, 583, 121 P 784, 1057.

Collateral References

Colleges and Universities ≈3. 14 C.J.S. Colleges and Universities §§ 4, 75-710.1. Change of name of experimental station in horticulture. The name of the horticulture branch experiment station at Corvallis, established by legislative act in 1907 (chapter 146, Laws of 1907, Revised Codes of Montana, 1947, section 75-710) be, and is hereby changed to the western Montana branch experiment station of the agricultural experiment station of Montana state college, and that said western Montana branch experiment station be continued under the general supervision of the director of the agricultural experiment station.

History: En. Sec. 1, Ch. 30, L. 1959.

75-710.2. Function of branch experiment station—employment of assistants. The future function of this branch experiment station is hereby declared to conduct studies, investigations, and researches into agricultural problems of particular interest to western Montana. The director of the agricultural experiment station shall be, and is hereby authorized to employ competent assistants and such other help as may be necessary to carry on the work and to incur other necessary expenses for operation and maintenance.

History: En. Sec. 2, Ch. 30, L. 1959.

75-710.3. Authority to accept donations of land suitable for experimental purposes. The Montana state board of education is hereby authorized to accept, on behalf of the state of Montana, for the use of the western Montana branch experiment station, donation or donations of land suitable for experimental purposes, providing such land be conveyed to the state in fee simple, and be free of all encumbrances, and title to same shall be acceptable to the attorney general of Montana.

History: En. Sec. 3, Ch. 30, L. 1959.

75-710.4. Authority to accept donations of money, implements, livestock, etc. The Montana state board of education is hereby authorized to accept on behalf of the state of Montana for the use of the western Montana branch experiment station donations of money, implements, scientific equipment, building materials, livestock and supplies in the furtherance of the work of said experiment station.

History: En. Sec. 4, Ch. 30, L. 1959.

75-711. (899) Experiment substation located in Fergus county. That there is hereby established, to be located in Fergus county, Montana, on such land as may be donated to the state of Montana and accepted by the governor and secretary of state as suitable for the purpose, a substation of the agricultural experiment station provided for in section 75-703. Said substation shall be under the direction of the experiment station of the agricultural college of the state of Montana.

History: En. Sec. 1, Ch. 189, L. 1907; Sec. 763, Rev. C. 1907; re-en. Sec. 899, R. C. M. 1921. Collateral References
Colleges and Universities €=3.
14 C.J.S. Colleges and Universities §§ 4,

References

In re Beck's Estate, 44 M 561, 121 P 784, 1057.

75-712. (900) Authority of governor to accept site. The governor and secretary of state are hereby authorized to accept, on behalf of the state, donation or donations of land for such purposes, provided such land be conveyed to the state in fee simple, and be free of all encumbrances and the title to the same be good.

History: En. Sec. 2, Ch. 189, L. 1907; Sec. 764, Rev. C. 1907; re-en. Sec. 900, R. C. M. 1921.

75-713. (901) Acceptance of donations of money and material. The said college is authorized to receive donations of money, implements, building materials, animals, and supplies for the use of said substation.

History: En. Sec. 4, Ch. 189, L. 1907; Sec. 765, Rev. C. 1907; re-en. Sec. 901, R. C. M. 1921. Collateral References
Colleges and Universities € 6(2).
14 C.J.S. Colleges and Universities § 12.

References

In re Beck's Estate, 44 M 561, 583, 121 P 784, 1057.

75-714. State wool laboratory established at state college. There is hereby created and established at the Montana state college of agricultural and mechanic arts at Bozeman, Montana, and in the Montana agricultural experiment station, a state wool laboratory for the purpose of sampling, testing and scouring wool clips and fleeces of Montana woolgrowers to ascertain shrinkage, strength, fineness, length of staple, uniformity and character of wool, and for the purpose of carrying on effective scientific and practical research work to the end of developing as complete and accurate knowledge of Montana wools as is reasonably possible.

History: En. Sec. 1, Ch. 166, L. 1945.

75-715. Name. The name of the said wool laboratory as established in the foregoing section shall be the Montana wool laboratory.

History: En. Sec. 2, Ch. 166, L. 1945.

75-716. Supervision—director of agricultural experiment station. The Montana wool laboratory shall be under the general supervision of the director of the Montana agricultural experiment station. It shall be directly in charge of the head of the department of animal industry and range management of the Montana agricultural experiment station who shall be known as the director of the laboratory. Said director of the laboratory shall organize the Montana wool laboratory at its permanent location and perfect its field service and arrange adequate staff, equipment and facilities, by and with counsel of the advisory committee hereinafter provided.

History: En. Sec. 3, Ch. 166, L. 1945.

75-717. Advisory committee created—members, how selected—terms—meetings—per diem. There is hereby created and established an advisory committee of three (3) members who shall aid or assist and advise in the internal administration, field service, and all activities of the laboratory as hereafter provided: The advisory committee shall consist of (a) the director of the agricultural experiment station; (b) one (1) member selected by the governor, as chairman of the state board of education, from a

list of woolgrowers named by the board of trustees of the Montana woolgrowers association; and (c) one (1) member selected by the governor from a list of members of the wool trade named by the director of the agricultural experiment station from among individuals actively engaged within the state of Montana in the handling of Montana wools. The director of the laboratory shall serve as secretary of said advisory committee. The two (2) chosen committee members shall serve respectively, a three (3) year term from and after the initial organization of the advisory committee. The advisory committee shall meet not less than once in each year to hear the annual report and participate in the formulation of the policy and program of the Montana wool laboratory. Per diem expenses of the two (2) chosen committee members shall be paid out of laboratory funds at the rate of ten (\$10.00) dollars per day of service.

History: En. Sec. 4, Ch. 166, L. 1945.

75-718. Director may promulgate rules and regulations. The director of the laboratory and advisory committee shall have the power to promulgate reasonable rules and regulations within the limitation of this act as may be necessary or proper for the conduct of the laboratory and its field service and for relations with individual woolgrowers and members of the wool trade desiring the services of the laboratory.

History: En. Sec. 5, Ch. 166, L. 1945.

75-719. Director to employ help—travel expense—publication. The director of the laboratory shall have authority to employ such employees, scientific, skilled or practical, as are necessary fully to carry on the work of the laboratory and he shall have authority to incur expenditures for travel, hotel, meals, express, freight, postage, and other items necessary in connection with sampling, testing, and research. The director of the laboratory, with the assistance of the laboratory staff, will be responsible for the publication of results of the work of the laboratory and he shall have authority to incur expenditures necessary for publication of results.

History: En. Sec. 6, Ch. 166, L. 1945.

75-720. Collection, samples of wool. The Montana wool laboratory shall maintain a field service which shall collect samples of Montana wool for tests, from all Montana woolgrowers willing to co-operate with the laboratory in order to establish the true grade and character of such wools and the other factors mentioned.

The laboratory is directed to build up complete, consecutive records for the purpose of establishing permanent bases from which to judge as to results and to formulate judgment as to the types of sheep especially adapted and productive in the Montana wool growing industry, and all woolgrowers submitting samples for testing shall, as a condition of receiving service, fully co-operate with the laboratory in the disclosure of relevant data.

History: En. Sec. 7, Ch. 166, L. 1945.

75-721. Fees paid for testing service. Woolgrowers availing themselves of the testing service shall pay fees therefor to the Montana wool laboratory as determined by the cost of furnishing the specific testing service. These

costs shall be adjusted so that the field service shall eventually become self-supporting in itself, without respect to the research work.

History: En. Sec. 8, Ch. 166, L. 1945.

75-722. Co-operation with United States department of agriculture—system of records—receipt and disposition of moneys. The Montana wool laboratory shall co-operate fully with the United States department of agriculture for the benefit of the Montana wool industry. The laboratory shall keep a complete and comprehensive system of records covering (a) its internal administration, (b) activities and meetings of its advisory committee and (c) all sampling, testing and research work. The Montana wool laboratory is hereby authorized to receive from the federal government any moneys which the federal government may make available for the use of such laboratory, and all such funds shall be paid to the state treasurer and by him deposited in a special trust fund, hereinafter provided for, or in such other fund as may be designated by the federal government. The Montana wool laboratory is further authorized to receive donations from individuals for the purposes of said laboratory, which shall also be paid to the state treasurer and be deposited in said special trust fund.

History: En. Sec. 9, Ch. 166, L. 1945.

75-723. Appropriation—disposal of moneys received by laboratory. There is hereby appropriated out of the state treasury of the state of Montana for the establishment and maintenance of the Montana wool laboratory, including salaries, expenses, necessary buildings and equipment, the sum of twenty-five thousand dollars (\$25,000.00) for each of the fiscal years, July 1, 1945 through June 30, 1946, and July 1, 1946 through June 30, 1947, out of any moneys in the general fund of the state of Montana not otherwise appropriated.

All moneys collected by the Montana wool laboratory shall be paid to the state treasurer and by him shall be set aside in a special trust fund, from which fund there is hereby appropriated for the use of said wool laboratory as much thereof as may be necessary for the payment of salaries and expenses, including purchase of equipment and supplies, and erection of necessary buildings.

In addition, there is hereby appropriated for the Montana wool laboratory, all federal funds which may by the federal government be provided for the maintenance and operation of said Montana wool laboratory and also all funds which may be received by said laboratory, or for its use and benefit for special purposes incident to, and in harmony with the purpose of said laboratory.

History: En. Sec. 10, Ch. 166, L. 1945.

75-724. Establishment of northwestern Montana branch station. There is hereby established a branch of the agricultural experiment station of Montana state college, to be known as "northwestern Montana branch station," for the purpose of conducting studies, investigations, and researches into agricultural problems. Said branch shall be located on a site in northwestern Montana to be selected by the administrative officers of

the agricultural experiment station and shall be under the direction of the agricultural experiment station of Montana state college.

History: En. Sec. 1, Ch. 190, L. 1947.

75-725. Authority to accept donation or donations of land. The Montana state board of examiners is hereby authorized to accept, on behalf of the state of Montana, for the use of the agricultural experiment station in establishing said northwestern Montana branch station, donation or donations of land adequate and suitable for experimental purposes, providing such land be conveyed to the state in fee simple and free of all encumbrances.

History: En. Sec. 2, Ch. 190, L. 1947.

75-726. Authority to accept donations of money and material. The Montana state board of examiners is hereby authorized to accept, on behalf of the state of Montana, for the use of the agricultural experiment station in establishing and operating said northwestern Montana branch station, donations of money, implements, scientific equipment, building materials, animals and supplies.

History: En. Sec. 3, Ch. 190, L. 1947.

75-727. Acceptance by state of Huntley branch experiment station. That the Montana state board of examiners is hereby authorized to accept from the government of the United States on behalf of the state, for the use of the agricultural experiment station of Montana state college of the university of Montana, title in fee simple to the Huntley branch station in Yellowstone county, including lands and all improvements thereon.

History: En. Sec. 1, Ch. 195, L. 1947.

75-728. Operation of station. That said Huntley branch station, after transfer to state ownership, shall be operated under the general supervision of the director of the agricultural experiment station of Montana state college of the university of Montana, for the purpose of conducting researches pertaining to agricultural problems of south central Montana.

History: En. Sec. 2, Ch. 195, L. 1947.

75-729. Eastern Montana branch experiment station established. That there is hereby established a branch of the agricultural experiment station of Montana state college of the university of Montana to be known as the eastern Montana branch station for the purpose of conducting studies, investigations, and researches into agricultural problems. Said branch station shall be located on a site to be selected by the administrative officers of the agricultural experiment station subject to the approval of the state board of education, and shall be under the general supervision of the director of the agricultural experiment station. Said director shall be authorized to employ competent assistants and such other help as may be necessary to carry on the work and to incur other necessary expenses for operation and maintenance.

History: En. Sec. 1, Ch. 222, L. 1947.

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75-730. Acceptance of land donations authorized. That the Montana state board of examiners is hereby authorized to accept, on behalf of the state of Montana, for the use of the agricultural experiment station in establishing said eastern Montana branch station, donation or donations of land adequate and suitable for experimental purposes, providing such land be conveyed to the state in fee simple, and be free of all encumbrances and title to same shall be acceptable to the attorney general of Montana.

History: En. Sec. 2, Ch. 222, L. 1947.

75-731. Acceptance of money and material authorized. That the Montana state board of examiners is hereby authorized to accept, on behalf of the state of Montana, for the use of the agricultural experiment station in establishing and operating said eastern Montana branch station, donations of money, implements, scientific equipment, building materials, livestock, and supplies.

History: En. Sec. 3, Ch. 222, L. 1947.

75-732. Coal utilization experiment project—purpose. It is the intention of the legislative assembly by this act to encourage and assist in the project for the study of commercial utilization of Montana's coal and lignite being conducted at Montana state college, to maintain and improve the present ten ton per day demonstration char plant now located at the state college, and to encourage the industrial development of Montana, and industrial utilization of Montana's natural resources; to point the way to development of the vast coal and lignite deposits now lying unutilized.

History: En. Sec. 1, Ch. 180, L. 1955.

75-733. Establishment of project. There is hereby established at the Montana state college at Bozeman an experiment project for the purpose of procuring and testing samples of coal and lignite from the various coal and lignite fields throughout Montana, and for carrying out effective scientific and practical research work to the end of developing as complete and accurate a knowledge of Montana's coal and lignite; and the various processes for commercial utilization of such coal and lignite, including the continuation of present experiments in the conversion of coal and lignite into coal chemicals and chars.

History: En. Sec. 2, Ch. 180, L. 1955.

75-734. Supervision and responsibility of project—reservation to state of patents. The experimental project shall be under the supervision and direction of the engineering experiment station of Montana state college, and the director of the engineering experiment station shall have general supervision control and responsibility over the functions of the coal utilization experiment project, and is directed to keep complete records and files on the said project and to make available such records and information to the public and to private industries now developing or which may in the future seek to develop the coal and lignite resources of Montana; provided, however, there shall be reserved to the state of Montana

such patent or other rights, as may be availed of, by reason of said experiment project.

History: En. Sec. 3, Ch. 180, L. 1955.

75-735. Purchase of sites or experimental farms-money for. That the state board of education, acting for and on behalf of Montana state college of Bozeman, Montana, make available for the purchase of sites or experimental farms from any funds deposited in the Montana trust and legacy fund credited to the Montana state college through provisions of the Morrill Land Act of 1862 and known as the Agricultural College Morrill Permanent Fund, a sum not to exceed ten per centum (10%) of the amount of such fund in accordance with the provisions of the Morrill Act of July 2, 1862.

History: En. Sec. 1, Ch. 248, L. 1955.

75-736. Moneys apportioned from endowment funds not to be applied towards buildings. No portion of the moneys apportioned from the endowment funds for the purchase of sites or experimental farms shall be applied directly or indirectly to the purchase, erection, preservation or repair of any building or buildings.

History: En. Sec. 2, Ch. 248, L. 1955.

75-737. Approval and essentiality of sites or experimental farms. Any sites or experimental farms purchased in accordance with the provisions of this act must first be approved by the state board of education with the approval of the Montana state college advisory council, and be essential for the effective operation of the instructional and research programs of the Montana state college and the agricultural experiment station.

History: En. Sec. 3, Ch. 248, L. 1955.

75-738. Limitation on total amount expended for sites or experimental farms. The total amount which may be used for purchase of needed lands for sites or experimental farms under the provisions of this act may not exceed ten per centum (10%) in the aggregate of the total amount which has now or which may accrue to the credit of the agricultural college Morrill permanent account in the Montana trust and legacy fund.

History: En. Sec. 4, Ch. 248, L. 1955.

#### CHAPTER 8

# MONTANA GRAIN INSPECTION LABORATORY

Section 75-801. Grain laboratory established at experiment station.

75-802. Official name of laboratory.
75-803. Purposes of laboratory—samples and tests of grains and reports made of results.

75-804. Germination and purity tests of grain samples.

75-805. Supervision and control of laboratory.

Employment of assistant and necessary help.

75-806. Employment or assistant and 75-807. Fees chargeable for making tests. 75-808. Tests of grain samples to determine grade and dockage. 75-809. Reports of tests-annual report.

75-810. Who may send samples to be tested—procedure in case of disagreement between buyer and seller.

75-811. Disposition of fees and annual report of expenditures.

75-801. (902) Grain laboratory established at experiment station. There is hereby established at the Montana agricultural experiment station a state grain laboratory for the study of the milling and baking quality of wheat raised in Montana, and for the study of the germinating capacity, quality, and purity of field crop seeds grown and sold in the state of Montana, as far as this may be determined. This laboratory shall be known as the Montana grain laboratory.

History: En. Sec. 1, Ch. 119, L. 1913; re-en. Sec. 902, R. C. M. 1921.

Collateral References
Inspection \$\infty\$3.
44 C.J.S. Inspection \$ 4.

75-802. (903) Official name of laboratory. The name of the Montana grain laboratory as established at the Montana agricultural experiment station is hereby changed to the Montana grain inspection laboratory.

History: En. Sec. 1, Ch. 54, L. 1917; re-en. Sec. 903, R. C. M. 1921.

Collateral References
Inspection ≈4.
44 C.J.S. Inspection §§ 10, 11.

75-803. (904) Purposes of laboratory—samples and tests of grains and reports made of results. The purpose of this laboratory shall be to make the studies necessary to establish the grade and quality of the wheat and other grains grown in the state by scientific and accurate tests, to the end that such facts established by scientific experiments, publicly disseminated, may aid the grain-growers and dealers in the state to establish the full market value of their products in the markets of the world.

Samples of the different kinds of wheat grown under the various conditions existing in the state of Montana shall be collected, and systematic study shall be made of each of these to determine their milling and baking value. Tests shall also be made of samples which may be sent to the laboratory by growers and dealers in the state of Montana, provided postage and transportation charges are prepaid and the method of taking the samples conforms to the regulations prescribed by the director in charge of the laboratory.

The director in charge of the laboratory shall keep an accurate record of all samples submitted, and report the results of all the milling and baking tests which are made in the laboratory to the parties submitting the samples, as soon as possible after such tests have been completed. The results from all the tests made at the laboratory must be reported in the form of bulletins or pamphlets, whenever the data accumulated shall be sufficient for such publication.

History: En. Sec. 2, Ch. 119, L. 1913; re-en. Sec. 904, R. C. M. 1921.

Collateral References
Inspection 5.
44 C.J.S. Inspection §§ 5-18.

# Cross-Reference

Testing agricultural seeds, secs. 3-805 to 3-807.

75-804. (905) Germination and purity tests of grain samples. Any citizen of the state of Montana, by conforming to the regulations prescribed

by the state grain laboratory of the Montana agricultural experiment station and by prepaying postage or transportation charges, may send a sample or samples of seed to the state grain laboratory of the Montana agricultural experiment station, which shall determine the percentage of germination, quality and purity of each sample sent. The results of these determinations shall be reported upon free of charge to the person sending such samples. Such of these tests as are of value to the public shall be reported in bulletin or pamphlet form, at least once a year.

History: En. Sec. 3, Ch. 119, L. 1913; re-en. Sec. 905, R. C. M. 1921.

Collateral References
Inspection 5.
44 C.J.S. Inspection §§ 5-18.

75-805. (906) Supervision and control of laboratory. This laboratory shall be under the general supervision of the director of the Montana agricultural experiment station. It shall be directly in charge of the agronomist of the Montana agricultural experiment station, who shall be known as the director in charge of the laboratory, and who, in co-operation with the board of directors of the Montana seed growers' association, shall make such rules and regulations as are necessary to the proper conduct of the laboratory under the purposes as outlined in section 75-803.

History: En. Sec. 4, Ch. 119, L. 1913; re-en. Sec. 906, R. C. M. 1921.

Collateral References Inspection 5 4. 44 C.J.S. Inspection § 10, 11.

75-806. (907) Employment of assistant and necessary help. The director in charge of the laboratory, under the direction of the director of the Montana agricultural experiment station, shall have authority to employ a competent assistant and such help as is needed to properly carry on the laboratory. They shall have authority to incur expenditures for travel, express, freight, postage, etc., necessary to collect samples for study, and to properly carry on the work of the laboratory.

History: En. Sec. 5, Ch. 119, L. 1913; re-en. Sec. 907, R. C. M. 1921.

Collateral References Inspection € 4. 44 C.J.S. Inspection §§ 10, 11.

75-807. (908) Fees chargeable for making tests. Samples of wheat sent in by individuals, the results from the testing of which samples are of no general or market value, shall be charged a fee sufficient to cover the cost of making the test. Fees so collected are to be deposited in a fund in charge of the director of the experiment station, to be used in support of the laboratory. Any surplus remaining in this fund at the close of the state's biennium shall be turned over to the state treasurer and shall revert to the state general fund.

History: En. Sec. 7, Ch. 119, L. 1913; re-en. Sec. 908, R. C. M. 1921.

Collateral References
Inspection © 6.
44 C.J.S. Inspection § 12.

75-808. (909) Tests of grain samples to determine grade and dockage. In addition to the duties already prescribed by law, this laboratory shall make thorough and complete tests on grain samples sent in by citizens of the state of Montana and collected by the officials of the laboratory, in order to establish the true grade of such samples and the true amount of dock-

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age contained therein. In the case of wheat samples sent in for grade and dockage tests, the laboratory shall determine the amount and quality of the gluten present, the percentage of moisture, and shall make such other determinations as shall be necessary to accurately show the quality and grade of the grain in sample.

History: En. Sec. 2, Ch. 54, L. 1917; re-en. Sec. 909, R. C. M. 1921.

Collateral References
Inspection ← 5.
44 C.J.S. Inspection §§ 5-18.

75-809. (910) Reports of tests—annual report. Reports shall be made to those sending samples for grade and dockage determinations, as soon as the tests have been completed and the grade and dockage determined. At the close of each laboratory year there shall be published a report of the work of the year, showing the names of persons from whom samples were received, the kind of grain, the results of the tests conducted, and the grade and dockage as established for each sample tested during the year. The report shall contain such other material as the officials of the Montana grain inspection laboratory may deem relevant and important. Copies of this report shall be sent without charge to citizens of the state who may request them.

History: En. Sec. 3, Ch. 54, L. 1917; re-en. Sec. 910, R. C. M. 1921.

75-810. (911) Who may send samples to be tested—procedure in case of disagreement between buyer and seller. Any citizen of the state of Montana, by conforming to the regulations prescribed by the officials of the Montana grain inspection laboratory, by prepaying postage and transportation charges on samples, and by paying any fee which may hereafter be prescribed by the proper authorities, may send grain samples to the Montana grain inspection laboratory. The true grade or the proper amount of dockage as requested by the sender shall be determined and reported to the sender. Whenever the buyer and seller of any lot of grain cannot agree upon the proper grade or dockage of the same, either party may demand that a sample of such grain be sent to the state grain inspector. sample shall be taken in the presence of both parties in interest, and shall be sealed and forwarded in the manner required by the inspector. grade and dockage fixed by the inspector on such grain shall be binding upon both parties, and any balance due either party shall be determined according to the grade and the dockage fixed by said inspector; provided, however, that in the case of a bona fide sale of such lot of grain at a terminal market outside the state, the grade and dockage fixed at such a terminal market shall not be disturbed, and any balance due between the parties shall be determined according to the grade and dockage that shall have been fixed at such sale.

History: En. Sec. 4, Ch. 54, L. 1917; re-en. Sec. 911, R. C. M. 1921.

75-811. (912) Disposition of fees and annual report of expenditures. All fees collected by the Montana grain inspection laboratory for the tests conducted shall be deposited in a fund in charge of the director of the laboratory, to be used in the support of the laboratory. A full report of the

expenditures of the laboratory, with a statement of the source of the income, whether from state appropriations or from fees collected, shall be made a part of the annual report. Any surplus remaining at the close of the state's biennium shall be turned over to the state treasurer and shall revert to the general fund of the state.

History: En. Sec. 9, Ch. 54, L. 1917; re-en. Sec. 912, R. C. M. 1921.

NOTE.—So much of the above section as relates to appropriations for 1918-1919 was omitted from the 1921 code.

Collateral References

Inspection € 6. 44 C.J.S. Inspection § 12.

# CHAPTER 9

## NORTHERN MONTANA COLLEGE

Section 75-901. Establishment-subjects for instruction.

75-902. Control and supervision.

75-903. Establishment of agricultural experimental substation.

75-904. Acceptance of gifts by state board of education.

75-905. Executive board—duties—location of school.

75-906. Appointment of principal and faculty. 75-907. Secretary and treasurer—bond.

75-901. (917) Establishment—subjects for instruction. Whereas the state of Montana has heretofore purchased from the United States the lands and buildings at Fort Assinniboine, Montana, upon certain conditions, which conditions have been partially complied with and discharged; and,

Whereas, there is a large amount of property so purchased by the state of Montana that is not in use or necessary for the proper operation of the agricultural experiment station now situated at said Fort Assinniboine; and said property is deteriorating in value and should be salvaged and the proceeds therefrom placed in a fund to be used for the purposes contemplated by the act of Congress, authorizing the sale of said property to the state of Montana; the northern Montana agricultural and manual training school which, pursuant to the provisions of chapter 67, Laws 1913, was established at Fort Assinniboine, Montana. It is hereby declared to be a body politic and corporate with power to sue and be sued, and receive property by gift, purchase, devise or bequest. It has for its object instruction and education in the English language, literature, and mathematics, mechanic arts, agricultural chemistry, animal and vegetable anatomy and physiology, and veterinary art, entomology, geology, and such other natural sciences as may be prescribed by the state board of education, political, rural and household economy, agriculture, horticulture, moral philosophy, history, bookkeeping, and especially the application of science and the mechanical arts to practical agriculture in the field, and irrigation and use of water for agricultural purposes; also all that relates to an efficient, modern manual training school.

History: En. Sec. 1, Ch. 67, L. 1913; re-en. Sec. 917, R. C. M. 1921; amd. Sec. 1, Ch. 66, L. 1925.

NOTE.—Section 75-402 provides that the legal name of the unit of the University of Montana located at Fort Assinniboine and Havre shall be Northern Montana College.

# Collateral References

Colleges and Universities 3.

14 C.J.S. Colleges and Universities §§ 4.

14 C.J.S. Colleges and Universities §§ 4 5.

 $55\ \mathrm{Am}.\ \mathrm{Jur.}\ 1,\ \mathrm{Universities}$  and Colleges, generally.

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75-902. (918) Control and supervision. The general control and management of the northern Montana agricultural and manual training school is vested in the state board of education and the local executive board hereinafter provided for.

History: En. Sec. 2, Ch. 67, L. 1913; re-en. Sec. 918, R. C. M. 1921; amd. Sec. 2, Ch. 66, L. 1925; amd. Sec. 1, Ch. 82, L. 1927. Collateral References

Colleges and Universities 7.

14 C.J.S. Colleges and Universities \$\\$ 17-19.

75-903. (919) Establishment of agricultural experimental substation. There is also established and shall be located on the lands and in the buildings aforesaid in connection with such agricultural school, an agricultural experimental substation to aid in acquiring and diffusing among the people of the state of Montana useful and practical information on subjects connected with field agriculture, and to promote scientific investigation and experiments respecting the principles and application of agricultural science, which experimental substation is established and under the direction of the directors of the Montana agricultural experiment station, located at Bozeman, Montana, and under the general control of the state board of education.

History: En. Sec. 3, Ch. 67, L. 1913; re-en. Sec. 919, R. C. M. 1921.

Collateral References

Colleges and Universities 53.
14 C.J.S. Colleges and Universities §§ 4,

75-904. (920) Acceptance of gifts by state board of education. The state board of education is hereby authorized and empowered to accept such gifts of money or other property as may be tendered to aid in repairing such buildings as are now located at Fort Assinniboine, and putting the same in condition to carry out the purposes of this act and for installing the necessary apparatus to initiate the work of said school.

History: En. Sec. 4, Ch. 67, L. 1913; re-en. Sec. 920, R. C. M. 1921.

Collateral References

Colleges and Universities 56(2). 14 C.J.S. Colleges and Universities 12.

75-905. (921) Executive board—duties—location of school. The governor shall, within thirty days after the passage and approval of this act, designate and appoint two persons, residents of Hill county, Montana, whose tenure of office shall be fixed by the state board of education, who together with the chancellor of the university of Montana shall constitute an executive board. The chancellor of the university to serve until such time as a faculty be selected for said school, after which the president of the school shall serve on said board in the place of the chancellor. Said board shall have the immediate direction and control of the affairs of said school subject only to the general supervision and control of the state board of education.

Said board shall take possession and control of said school at Fort Assinniboine, Montana, except such parts thereof as are under the control of and being used by the agricultural experiment station. Said board is authorized with the consent and approval of the state board of examiners to sell and dispose of any such property at public or private sale as it may

deem advisable to prevent loss through deterioration or other cause. deducting the necessary expenses of such sale, the proceeds together with any moneys received for said school from any other source shall be deposited with the state treasurer and by him credited to the fund known as the northern Montana agricultural and manual training school fund. fund shall be used for the support of said school.

Any academic department or departments of said school which do not of necessity or for reasonable convenience need to be located on the premises or grounds of said school at the Fort Assinniboine military reservation, may be located by the executive board and state board of education within or adjacent to the said city of Havre, Hill county, Montana.

History: En. Sec. 5, Ch. 67, L. 1913; re-en. Sec. 921, R. C. M. 1921; amd. Sec. 3, Ch. 66, L. 1925; amd. Sec. 2, Ch. 82, L. 1927.

Collateral References

Colleges and Universities 7. 14 C.J.S. Colleges and Universities §§ 17-

(922) Appointment of principal and faculty. The executive board is authorized to choose and appoint a principal and faculty of said school, who shall serve for such time and receive such compensation as the executive board may prescribe, subject to the approval of the state board of education.

History: En. Sec. 6, Ch. 67, L. 1913; re-en. Sec. 922, R. C. M. 1921.

Collateral References

Colleges and Universities 8. 14 C.J.S. Colleges and Universities §§ 21-

(923) Secretary and treasurer—bond. The executive board shall appoint a secretary thereof, who may also act as treasurer of said board and who may not be a member thereof, and such secretary and treasurer shall give bond, with good and sufficient surety or sureties, to be approved by the executive board, for the faithful performance of his duties, and for the faithful accounting for and paying over to the state board of education, to and for the use of said school, all moneys received by him as treasurer, in such sum as said state board of education shall prescribe.

History: En. Sec. 7, Ch. 67, L. 1913; re-en. Sec. 923, R. C. M. 1921.

Collateral References

Colleges and Universities 7. 14 C.J.S. Colleges and Universities §§ 17-

## CHAPTER 10

## WESTERN MONTANA COLLEGE OF EDUCATION

Section 75-1001. Establishment of school-name.

75-1002. Object of school.

Control and management. 75-1003.

75-1004. Repealed.

75-1005. Repealed.

75-1006. Acceptance of public lands.

Securities, how paid for.

75-1001. (926) Establishment of school—name. That there be and is hereby established within two miles of the corporate limits of the city of Dillon, Beaverhead county, Montana, a state normal school, which shall be called the "Western Montana College of Education."

History: En. Sec. 1, p. 180, L. 1893; amd. Sec. 1652, Pol. C. 1895; amd. Sec. 1, Ch. 29, L. 1903; re-en. Sec. 772, Rev. C. 1907; re-en. Sec. 926, R. C. M. 1921.

NOTE.—The name of the state normal school located at Dillon has been changed to conform to later enactment (Sec. 1, Ch. 30, Laws 1949; Sec. 75-402.1 of this code).

#### References

In re Beck's Estate, 44 M 561, 583, 121 P 784, 1057.

75-1002. (927) Object of school. The object of said normal school shall be the instruction and training of teachers for the public schools of the state of Montana, inclusive of all grades and departments.

History: En. Sec. 2, p. 180, L. 1893; re-en. Sec. 1653, Pol. C. 1895; re-en. Sec. 773, Rev. C. 1907; re-en. Sec. 927, R. C. M. 1921; amd. Sec. 1, Ch. 142, L. 1943; amd. Sec. 1, Ch. 106, L. 1947.

# Collateral References

Collateral References

generally.

Colleges and Universities 3.

14 C.J.S. Colleges and Universities §§ 4,

55 Am. Jur. 1, Universities and Colleges,

Colleges and Universities € 1. 14 C.J.S. Colleges and Universities §§ 1, 2.

75-1003. (928) Control and management. The control and management of the state normal college are vested in the state board of education and in a local executive board.

History: New section recommended by code commissioner, 1921; amd. Sec. 2, Ch. 142, L. 1943; amd. Sec. 2, Ch. 106, L. 1947.

#### Collateral References

Colleges and Universities 7.

14 C.J.S. Colleges and Universities §§ 17-

# 75-1004 and 75-1005. Repealed—Chapter 106, Laws of 1947.

75-1006. (929) Acceptance of public lands. The state board of education, herein mentioned, and their successors, shall receive, in the names of western Montana college of education and eastern Montana college of education, all the benefits, of whatsoever nature, that may be derived from the distribution and selection of lands contemplated in section 17 of an act of Congress, approved February 22, 1889, entitled "An act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and state governments and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states," and the state board of education is hereby authorized in carrying out the provisions of chapter 2 of Title 75 of the Revised Codes of Montana, 1947, as now amended, or as hereafter amended, to pledge one-half of all interest and income derived from said land grant for the payment in whole or in part of notes, bonds or other obligations issued by the board for residence halls or other facilities at western Montana college of education, and one-half of all interest and income derived from said land grant for the payment in whole or in part of notes, bonds or other obligations issued by the board for residence halls or other facilities at eastern Montana college of education; provided, however, that any such pledge shall be subject to any prior pledge by the board of any such interest and income. Provided further that all pledges of

income and interest funds must have the final approval of the state board of examiners.

History: En. Sec. 4, p. 180, L. 1893; re-en. Sec. 1655, Pol. C. 1895; re-en. Sec. 775, Rev. C. 1907; re-en. Sec. 929, R. C. M. 1921; amd. Sec. 1, Ch. 19, L. 1957.

Collateral References

Colleges and Universities 6(3). 14 C.J.S. Colleges and Universities § 11.

75-1007. (930) Securities, how paid for. Whenever any securities are purchased with state normal school funds and the same are duly executed and delivered to the president of the state board of land commissioners the board shall direct the state auditor to draw his warrant upon the state treasurer for the amount thereof, specifying the fund upon which, and the person in whose favor the said warrant shall be drawn, whereupon the state auditor shall draw a warrant upon the state treasurer accordingly, which warrant shall be delivered to the president of the state board of land commissioners, and shall be paid by the state treasurer upon the delivery to him of the purchased securities; provided, that the state treasurer shall purchase interest-bearing warrants issued against any fund whenever ordered so to do by the state board of land commissioners.

History: En. Sec. 2, Ch. 47, L. 1903; re-en. Sec. 790, Rev. C. 1907; amd. Sec. 1, Ch. 11, L. 1921; re-en. Sec. 930, R. C. M. 1921

Collateral References

Colleges and Universities 6(5). 14 C.J.S. Colleges and Universities § 14.

## CHAPTER 11

## EASTERN MONTANA COLLEGE OF EDUCATION

Section 75-1101. Establishment of eastern Montana college of education.

75-1102. Purpose of school.

75-1103. Control and management of school. 75-1104. Acceptance of grants and donations.

75-1101. (930.1) Establishment of eastern Montana college of education. That there be, and is hereby established, subject to the approval of the state board of education, a state normal school to be located within the state of Montana, east of the 110th meridian, at a place to be designated by the state board of education as herein provided, the said school to be known as the Eastern Montana College of Education.

History: En. Sec. 1, Ch. 160, L. 1925.

NOTE.—The name of the state normal school provided for in this section has been changed to conform to later enactment (Sec. 1, Ch. 30, Laws 1949; Sec. 75-402.1 of this code).

## Collateral References

Colleges and Universities 3.

14 C.J.S. Colleges and Universities §§ 4,

55 Am. Jur. 1, Universities and Colleges, generally.

75-1102. (930.2) Purpose of school. The objects and purposes of said normal school shall be primarily for the instruction and training of teachers for the public schools of the state of Montana.

History: En. Sec. 2, Ch. 160, L. 1925.

14 C.J.S. Colleges and Universities §§ 1,

Collateral References

Colleges and Universities 1.

75-1103. (930.3) Control and management of school. The control and management of the said eastern Montana college of education shall be

vested in the state board of education and in local executive board, which shall be appointed and constituted as provided by section 75-302.

History: En. Sec. 3, Ch. 160, L. 1925.

References

Meens v. State Board of Education, 127 M 515, 267 P 2d 981, 983.

Collateral References

Colleges and Universities 7.

14 C.J.S. Colleges and Universities §§ 17-

19.

75-1104. (930.4) Acceptance of grants and donations. The state board of education is hereby authorized to accept, for and on behalf of said eastern Montana college of education any donations of lands and any other gifts, grants or donations for the use and benefit of said eastern Montana college of education.

History: En. Sec. 5, Ch. 160, L. 1925.

Collateral References

Colleges and Universities € 6(2). 14 C.J.S. Colleges and Universities § 12.

## CHAPTER 12

# HISTORIC AND PREHISTORIC STRUCTURES

Section 75-1201. Repealed.

75-1201.1. Science commission abolished—transfer of powers.

75-1202. Historic structures—state monuments. 75-1203. Permits for excavation, etc.

75-1203. Permits for excavation, et 75-1204. Depository for collections.

75-1205. Regulation of exportation of scientific materials.

75-1206. Penalty-officers to enforce act.

# 75-1201. Repealed—Chapter 113, Laws of 1953.

## Repeal

This section (Sec. 1, Ch. 78, L. 1939), creating a science commission, was repealed by Sec. 2, Ch. 113, Laws 1953. Sec-

tion 1 of Ch. 113, Laws 1953 transferred all powers and duties of the commission to the state historical society and is compiled as sec. 75-1201.1.

75-1201.1. Science commission abolished—transfer of powers. The science commission be and the same hereby is abolished and the powers and duties thereof transferred to the state historical society hereinafter referred to as the society.

History: En. Sec. 1, Ch. 113, L. 1953.

Collateral References States \$\infty 44. 81 C.J.S. States \$55.

75-1202. Historic structures—state monuments. That the commissioner of the state land office is hereby authorized on recommendation of the board of trustees of the state historical society of Montana with the approval of the commissioner of public lands to declare by public proclamation that historic and prehistoric structures and other objects of scientific interest that are situated upon the lands owned or controlled by the state of Montana, shall be state monuments, and may reserve as a part thereof such parcels of land as may be necessary to the proper care and management of the objects to be protected.

History: En. Sec. 2, Ch. 78, L. 1939; amd. Sec. 3, Ch. 113, L. 1953.

Collateral References States \$\infty\$=\text{85}. 81 C.J.S. States \\$ 104.

75-1203. Permits for excavation, etc. That permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity, or general scientific interest, may be granted by the commissioner of public lands on recommendation of the board of trustees of the state historical society to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as the aforesaid society with the approval of the commissioner of public lands may prescribe: Provided, that the examinations and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view of increasing the knowledge of such objects, and: Provided, that not less than fifty per cent (50%) of all specimens so collected by nonresident institutions shall be retained as the property of the state of Montana, unless the commissioner of public lands shall expressly accept a smaller proportion, as meeting the requirements of this act, and: Provided, that this act shall not interfere with the making of natural history collections by individuals, for scientific purposes only, provided that such individuals secure permits as prescribed in this section.

History: En. Sec. 3, Ch. 78, L. 1939; amd. Sec. 4, Ch. 113, L. 1953.

Collateral References
Public Lands \$\infty 158\frac{1}{2}.
73 C.J.S. Public Lands \\$ 235.

75-1204. Depository for collections. Unless other locations shall be designated by the society, the historical society of Montana shall be the depository for all collections made under the provisions of this act and shall distribute material from such collections to any museum throughout the state of Montana, on request of the governing bodies of the said local museums, when in the opinion of the board of trustees, of said society, proper arrangements are made for the safe custodianship and public exhibition of such material.

History: En. Sec. 4, Ch. 78, L. 1939; amd. Sec. 5, Ch. 113, L. 1953.

Collateral References Municipal Corporations ← 721(1). 64 C.J.S. Municipal Corporations § 1819.

75-1205. Regulation of exportation of scientific materials. The disposition of historic and scientific material referred to in this act, to individuals or institutions outside the state of Montana, is expressly forbidden, except by permission of the board of trustees of said society, approved by the commissioner of public lands, and the transportation by public or private carriers of such material to points outside the state of Montana, is expressly prohibited, except as may be necessary in carrying out the provisions of the permits issued by the government of the United States under the federal statutes for the preservation of American antiquities, and under the permits granted by the state historical society of the state of Montana.

History: En. Sec. 5, Ch. 78, L. 1939; amd. Sec. 6, Ch. 113, L. 1953.

75-1206. Penalty—officers to enforce act. That any person who shall appropriate, excavate, injure or destroy any historic or prehistoric ruin

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or monument, or any object of historical, archaeological or scientific value, situated on lands owned or controlled by the state of Montana, or its institutions, without the recommendation of the state historical society of Montana and the consent of the commissioner of the state land office, shall be fined in a sum of not more than five hundred dollars (\$500.00) or be imprisoned for a period of not more than ninety (90) days, or shall suffer both fine and imprisonment in the discretion of the court; and it shall be the duty of any employee of the state land office, or any peace officer, including constables and sheriffs, to proceed against any violation of this law, and the duty of county attorneys of this state to prosecute anyone violating the provisions of this act.

History: En. Sec. 6, Ch. 78, L. 1939; amd. Sec. 7, Ch. 113, L. 1953.

Collateral References Public Lands \$\infty\$16. 73 C.J.S. Public Lands § 17.

# CHAPTER 13

# THE PUBLIC SCHOOLS—SUPERINTENDENT OF PUBLIC INSTRUCTION

Section 75-1301. Election, qualification, oath and bond.

75-1302. General powers.

75-1303. Official staff.

75-1304. Official files and records.

75-1305. Blanks. 75-1306. Official records. 75-1307. Official seal.

75-1308. Printing of school laws.

75-1309. Report.
75-1310. Publication of report.
75-1311. Course of study.
75-1312. Institutes and summer schools—rules.

75-1313. County superintendents.

75-1314. Repealed.

75-1315. Apportionment of school fund.

75-1316. Libraries.

75-1317. Other duties of state superintendent.

75-1318. Repealed.

75-1319. Authority to make surveys-funds.

75-1320. Elementary school supervisor.

75-1301. (931) Election, qualification, oath and bond. There shall be chosen by the qualified electors of the state, at the time and place of voting for members of the legislature, a superintendent of public instruction, who shall have attained the age of thirty years at the time of his election, and shall have resided within the state two years next preceding his election, and is the holder of a state certificate of the highest grade, issued in some state, and recognized by the state board of education, or is a graduate of some university, college, or normal school recognized by the state board by [of] education as of equal rank with the university of Montana or the state normal school. He shall hold his office at the seat of government for the term of four years from the first Monday in January following his election, and until his successor is elected and qualified. Before entering upon his duties, he shall take the oath of a civil officer and give bond in the penal sum of three thousand dollars, with not less than two sureties, to be approved by the governor and attorney general.

History: En. Sec. 1700, Pol. C. 1895; re-en. Sec. 805, Rev. C. 1907; amd. Sec. 200, Ch. 76, L. 1913; re-en. Sec. 931, R. C. M. 1921.

NOTE.—Bond is given as fixed by sec. 6-101.

## Compiler's Note

The bracketed word "of" was inserted by the compiler.

#### Collateral References

Schools and School Districts 47.
78 C.J.S. Schools and School Districts 86.
47 Am. Jur. 316, Schools, § 29 et seq.

He shall have the general supervision

**75-1302.** (932) **General powers.** of the public schools of the state.

History: Ap. p. Sec. 1702, Pol. C. 1895; re-en. Sec. 807, Rev. C. 1907; amd. Sec. 201, Ch. 76, L. 1913; re-en. Sec. 932, R. C. M. 1921.

#### References

State ex rel. School District No. 29 v. Cooney, 102 M 521, 526, 59 P 2d 48.

#### Collateral References

Schools and School Districts 47.
78 C.J.S. Schools and School Districts
86.

47 Am. Jur. Schools, p. 324, §§ 42 et seq.; p. 360, §§ 89 et seq.

Validity of regulation by school authorities as to clothes of pupils. 18 ALR 649 and 30 ALR 1216.

Regulations as to school or college fraternities. 27 ALR 1074 and 134 ALR 1274. Regulations forbidding pupils to leave

school grounds during school hours. 32 ALR 1342 and 48 ALR 659.

Marriage or other domestic relations as ground for exclusion of pupil from public school. 63 ALR 1164.

(933) Official staff. The superintendent of public instruction shall have the power to appoint one deputy, one high school supervisor, one rural school supervisor, one music supervisor, and such other assistants as may be required to aid in carrying out the duties of his office. Such deputy, supervisors and assistants shall perform such duties pertaining to the office as the superintendent may direct. Such music supervisor shall be qualified to perform the following duties: Supervise the teaching of music in the graded, rural and high schools of this state, and assist the teachers and faculty in said schools in establishing and carrying out a progressive music program for the benefit of all children in the public schools of the state, and perform all other duties required relating to music education in the public schools. The music supervisor must possess the following qualifications: A graduate in public school music from an accredited college or university, and said supervisor shall have had five (5) years teaching experience in public school music. The music supervisor shall perform only such duties as apply to music supervision.

For the purposes of organization of the staff and administration of the duties and services of the superintendent of public instruction, there is hereby created under the office of the superintendent of public instruction a department of public instruction, of which department the superintendent of public instruction shall be the executive and administrative head.

History: En. Sec. 201, Subd. 2, Ch. 76, L. 1913; amd. Sec. 4, Ch. 196, L. 1919; re-en. Sec. 933, R. C. M. 1921; amd. Sec. 1, Ch. 149, L. 1937; amd. Sec. 1, Ch. 68, L. 1959.

## Cross-Reference

Deputy superintendent of public instruction, sec. 82-601.

75-1304. (934) Official files and records. The superintendent shall preserve in his office all books, maps, charts, works on education, school registers, school reports, and school laws of other states and cities, plans for school buildings, and other articles of educational interest and value which may come into his possession as such officer, and at the expiration of his term shall deliver them, together with the reports, statements, records, and archives of his office to his successor.

History: En. Sec. 1703, Pol. C. 1895; 202, Ch. 76, L. 1913; re-en. Sec. 934, R. C. re-en. Sec. 808, Rev. C. 1907; amd. Sec. M. 1921.

75-1305. (935) Blanks. He shall cause to be printed and furnished to the proper officers or persons all school registers, reports, statements, notices, and blanks for returns needed or required to be used in the schools or by the school officers in the state.

History: En. Sec. 1703, Pol. C. 1895; R. C. M. 1921; amd. Sec. 1, Ch. 64, L. re-en. Sec. 808, Rev. C. 1907; amd. Sec. 1961. 202, Ch. 76, L. 1913; re-en. Sec. 935,

75-1306. (936) Official records. He shall keep a record of his official acts, and shall file in his office all appeals and papers pertaining to them.

History: En. Sec. 1708, Pol. C. 1895; 202, Ch. 76, L. 1913; re-en. Sec. 936, R. C. re-en. Sec. 813, Rev. C. 1907; re-en. Sec. M. 1921.

75-1307. (937) Official seal. He shall provide and keep a seal, which shall be the official seal of the state superintendent of public instruction, and by which all of his official acts may be authenticated.

History: En. Sec. 1710, Pol. C. 1895; 202, Ch. 76, L. 1913; re-en. Sec. 937, R. C. re-en. Sec. 815, Rev. C. 1907; re-en. Sec. M. 1921.

75-1308. (938) Printing of school laws. Whenever he shall deem necessary, but not more frequently than once in every four years, he shall cause to be printed the complete school laws of the state, with such notes and decisions thereon as may seem to him advisable.

Immediately following each regular session of the legislative assembly, he shall cause to be printed a cumulative supplement to the most recent edition of the complete school laws, containing all amendments to school laws and new school laws enacted by the legislative assembly since the printing of the most recent edition of the complete school laws. Such supplement shall contain such notes and decisions as may seem to him advisable. No supplement shall be printed in any year when the complete school laws are printed.

He shall furnish to the school officers in the state, and to any other persons requiring the same, copies of the school laws and supplements, at a price not to exceed the cost of preparing and distributing such laws and supplements.

History: En. Sec. 1709, Pol. C. 1895; R. C. M. 1921; amd. Sec. 2, Ch. 64, L. re-en. Sec. 814, Rev. C. 1907; re-en. Sec. 1961. 202, Ch. 76, L. 1913; re-en. Sec. 938,

75-1309. (939) **Report.** He shall, on or before the first day of December preceding the biennial session of the legislative assembly, make and transmit to the governor a report showing:

- (a) The number of school districts, schools, teachers employed, and pupils taught therein, and the attendance of pupils and studies pursued by them.
- (b) The financial condition of the schools, their receipts and expenditures, value of schoolhouses and property, cost of tuition, and wages of teachers.
- (c) The condition, educational and financial, of the normal and higher institutions connected with the school system of the state, and, as far as it can be ascertained, of the private schools, academies, and colleges of the state.
- (d) Such general matters, information, and recommendations relating to the educational interest of the state as he may deem important.

History: En. Sec. 1712, Pol. C. 1895; re-en. Sec. 817, Rev. C. 1907; amd. Sec. 202, Ch. 76, L. 1913; re-en. Sec. 939, R. C. M. 1921.

#### References

State ex rel. School District No. 29 v. Cooney, 102 M 521, 526, 59 P 2d 48.

75-1310. (940) Publication of report. Fifteen hundred copies of the report of the superintendent of public instruction shall be printed biennially, in the month of December preceding the session of the legislative assembly. Two copies shall be furnished to each of the members of the legislative assembly, one copy to each county superintendent of the state, one copy to the clerk of each school board, two to each state officer, one to each state and territorial superintendent; fifty copies shall be filed in the office of the superintendent of public instruction, and ten in the state historical library. The balance shall be distributed among the various colleges, universities, and other libraries of the United States.

History: En. Sec. 1713, Pol. C. 1895; 202, Ch. 76, L. 1913; re-en. Sec. 940, R. re-en. Sec. 818, Rev. C. 1907; re-en. Sec. C. M. 1921.

**75-1311.** (941) **Course of study.** He shall prepare, or cause to be prepared, with the co-operation and approval of such educators as may be named by the state board of education, a course of study for all the public elementary and high schools of the state, and shall prescribe to what extent the same is to be used.

History: En. Sec. 1705, Pol. C. 1895; re-en. Sec. 810, Rev. C. 1907; amd. Sec. 202, Ch. 76, L. 1913; re-en. Sec. 941, R. C. M. 1921.

### References

State ex rel. School District No. 29 v. Cooney, 102 M 521, 526, 59 P 2d 48.

75-1312. (942) Institutes and summer schools—rules. He shall prescribe, with the approval of the state board of education, rules and regulations for the holding of teachers' institutes, and summer schools for teachers; shall prepare, with the approval of the state board of education, lists of instructors for institutes and summer schools from which county superintendents shall make their appointments. He shall attend and assist at teachers' institutes and summer schools for teachers, and aid and encourage generally teachers in qualifying themselves for the successful discharge of their duties.

History: Ap. p. Sec. 1711, Pol. C. 1895; 816, Rev. C. 1907; amd. Sec. 202, Ch. 76, amd. Sec. 1, p. 129, L. 1897; re-en. Sec. L. 1913; re-en. Sec. 942, R. C. M. 1921.

75-1313. (943) County superintendents. He shall counsel with and advise county superintendents upon all matters involving the welfare of the schools; he shall, when requested, give them written answers to all questions concerning the school law. He shall decide all appeals from the decisions of the county superintendent, and may for such decision require affidavits, verified statements, or sworn testimony as to the facts in issue. He shall prescribe and cause to be enforced rules of practice and regulations pertaining to the hearing and determining of appeals, and necessary for carrying into effect the school laws of the state. He may also call an annual meeting of county superintendents at such times as he may deem advisable.

History: En. Sec. 1707, Pol. C. 1895; re-en. Sec. 812, Rev. C. 1907; amd. Sec. 202, Ch. 76, L. 1913; amd. Sec. 5, Ch. 196, L. 1919; re-en. Sec. 943, R. C. M. 1921.

# Appeal to State Superintendent Required before Action

It is the policy of the state that ordinary school controversies shall be adjusted by school officers entrusted with that duty, in whom the law imposes a wide discretion with which the courts will not interfere unless there is clear abuse thereof, or arbitrary and unlawful action. Where a teacher who had been dismissed by the board of school trustees, appealed to the county superintendent but failed to appeal to the superintendent of public instruction from an unfavorable decision, judgment for defendant in her action for breach of contract was proper, plaintiff having failed to exhaust her remedy afforded by law by not appealing to the superintendent of public instruction, and nothing appearing in the record to show an abuse of discretion on the part of any of the school authorities. Kelsey v. School

District No. 25, 84 M 453, 459, 276 P 26, distinguished in 88 M 110, 115, 290 P 252, explained in 114 M 488, 499, 138 P 2d 569.

# Estoppel by Correspondence

An informal letter written by the superintendent of public instruction to a county superintendent based on correspondence between them relative to an order of the latter abolishing a school district and approving his action did not debar the state superintendent from thereafter passing upon the same question when presented upon a formal appeal from the county superintendent's decision. State ex rel. School District No. 86 v. Trumper, 69 M 468, 477, 222 P 1064.

#### References

State ex rel. School District No. 29 v. Cooney, 102 M 521, 526, 59 P 2d 48.

# Collateral References

Schools and School Districts € 47. 78 C.J.S. Schools and School Districts § 86.

# 75-1314. (944) Repealed—Chapter 90, Laws of 1951.

# Repeal

This section (Sec. 1704, Pol. C. 1895; Sec. 202, Ch. 76, L. 1913; Sec. 5, Ch. 196, L. 1919; Sec. 3, Ch. 131, L. 1923; Sec. 1, Ch. 186, L. 1943), providing that the superintendent of public instruction should prepare the questions to be used in teachers' examinations, was repealed by Sec. 1, Ch. 90, Laws 1951, effective February 28, 1951.

75-1315. (945) Apportionment of school fund. He shall, between the first and tenth day of February of each year, apportion the state school fund among the several counties of the state, in proportion to the number of children of school age in each as shown by the last enumeration authorized by law. It shall be the duty of the state board of land commissioners to notify the state auditor on or before the tenth day of January of each year the amount of the state school fund subject to apportionment; and the said auditor, immediately upon receipt of such notification, shall issue his warrant on the state treasurer for the said amount. Thereupon the state treasurer shall certify said apportionment to the several county treasurers not later than the first Monday in March; provided, that the several county treasurers have fully complied with section 84-4401, in which case the

county treasurers, upon receiving notice from the state treasurer of the amounts due their counties from the state school fund, may deduct said amount from the amount found due the state by their counties and remit the balance to the state treasurer. The superintendent of public instruction shall certify to the county superintendent of schools of each county, the amount apportioned to that county.

History: En. Sec. 1714, Pol. C. 1895; re-en. Sec. 819, Rev. C. 1907; re-en. Sec. 202, Ch. 76, L. 1913; re-en. Sec. 945, R. C. M. 1921.

NOTE.—Sec. 84-4401 was originally sec. 183 of "an act concerning revenue, approved March 6, 1891" referred to in this section as originally enacted, appearing as sec. 3990, Political Code of 1895.

#### References

State ex rel. Knight v. Cave, 20 M 468, 473, 52 P 200; Jay v. School District No. 1, 24 M 219, 228, 61 P 250.

# Collateral References

Schools and School Districts 19(1), 47. 78 C.J.S. Schools and School Districts \$\ 21, 86.

75-1316. (946) Libraries. He shall prepare and furnish to school officers, through the county superintendents, lists of publications approved by him as suitable for school libraries; such list shall contain also the lowest price at which such publications can be purchased and the terms. He shall also prescribe rules and instructions for the proper care and use of school libraries, and such other information relative thereto as he shall think needful.

History: En. Sec. 1703, Pol. C. 1895; 202, Ch. 76, L. 1913; re-en. Sec. 946, R. re-en. Sec. 808, Rev. C. 1907; re-en. Sec. C. M. 1921.

75-1317. (948) Other duties of state superintendent. He shall also, as far as he shall find it practicable, address public assemblies on subjects pertaining to public schools, and shall labor faithfully in all practicable ways for the welfare of the public schools of the state, and shall perform such other duties as shall be required of him by law.

History: Ap. p. Sec. 1711, Pol. C. 1895; Rev. C. 1907; amd. Sec. 202, Ch. 76, L. amd. Sec. 1, p. 129, L. 1897; re-en. Sec. 816, 1913; re-en. Sec. 948, R. C. M. 1921.

# 75-1318. (949) Repealed—Chapter 182, Laws of 1949.

Repeal of
This section (Sec. 203, Ch. 76, L. 1913; ti
Sec. 1, Ch. 177, L. 1947), fixing the salary 19

of the superintendent of public instruction, was repealed by Sec. 4, Ch. 182, Laws 1949. For present law, see sec. 25-501.

75-1319. Authority to make surveys—funds. The state superintendent of public instruction is hereby authorized to make general surveys of the school facilities of the state for the purpose of determining the adequacy of state and local resources to meet present and future school facilities requirements. The state superintendent of public instruction is also authorized to request and use such funds as are now or will be made available under any act of Congress of the United States, or otherwise, to accomplish such purposes.

History: En. Sec. 1, Ch. 114, L. 1951.

75-1320. Elementary school supervisor. The state superintendent of public instruction with the approval of the state board of education shall appoint one elementary supervisor for the state, whose duty it shall be to inspect and supervise the work of the elementary schools of the state and to report from time to time such information concerning the same

as the state superintendent of public instruction may require. These duties shall not be in conflict with the duties of the rural school supervisor. The elementary supervisor shall have at least the qualifications required by law for a county superintendent of schools and shall hold office for such term and at such salary as the state superintendent with the approval of the state board of education may fix. The salary and expenses of such elementary supervisor shall be paid out of moneys appropriated for the support of the state department of public instruction.

History: En. Sec. 1, Ch. 162, L. 1957.

# CHAPTER 14

# EXCEPTIONAL CHILDREN—COURSES OF INSTRUCTION FOR

Section 75-1401. "Exceptional child" defined.

75-1402. Courses of instruction.

75-1403. Supervisor—qualifications of.

75-1404. Duties of supervisor.

75-1405. Volunteer board of specialists.

75-1406. Crippled children—home instruction—transportation—tax levy.

75-1401. "Exceptional child" defined. That within the meaning of this act an exceptional child is one requiring special facilities or instruction because of physical, mental, emotional or moral deviation from the average.

History: En. Sec. 1, Ch. 208, L. 1943.

75-1402. Courses of instruction. The state superintendent of public instruction, with the approval of the state board of education, shall prepare courses of instruction in the discovery and education of the exceptional child.

History: En. Sec. 2, Ch. 208, L. 1943.

# Collateral References

Schools and School Districts \$285.

75-1403. Supervisor—qualifications of. The state superintendent of public instruction shall provide necessary and adequate supervision for the purpose of carrying out this act and shall appoint a supervisor who shall be a graduate of a four (4) year accredited institution of higher learning with a master's degree representing at least one (1) year of post graduate training in the field of exceptional child care, guidance, and testing, and in addition, two years experience in the same.

History: En. Sec. 3, Ch. 208, L. 1943.

75-1404. Duties of supervisor. The duties of the supervisor shall be to discover the exceptional child throughout the state by observation, examination, and by intelligence, emotional, and achievement tests, and such other methods as are deemed necessary and expedient by him, and to administer an educational program for the exceptional child and to supervise subjects and methods to be used in the classrooms and schools in so far as they affect the exceptional child, and provided, however, that the provisions of this act shall not be mandatory upon any school or school district.

And for the purpose of properly educating and caring for such children, the supervisor shall see that the courses of instruction mentioned in section 75-1402 be available for all teachers in training and in service. He may recommend ungraded classrooms in schools. He may hold conferences, cooperate, advise, and investigate with school superintendents, principals, school faculties, individual teachers, parents, school boards, and other interested groups and persons. He may suggest physical examinations and perform other duties within the limits of this act not specified but directed by the state board of education or by the state superintendent of public instruction.

History: En. Sec. 4, Ch. 208, L. 1943.

75-1405. Volunteer board of specialists. The state superintendent of public instruction may appoint a volunteer board of various exceptional child specialists to whom the supervisor shall from time to time, as directed by the state superintendent of public instruction, give a report and from whom he may receive counsel.

History: En. Sec. 5, Ch. 208, L. 1943.

75-1406. Crippled children — home instruction — transportation — tax levy. The board of trustees of any school district, at its discretion, is authorized to assist the education of crippled children of five (5) to sixteen (16) years of age, who, because of physical handicap cannot regularly attend public school by furnishing home tutorial service for such crippled children or by furnishing transportation to and from adequate school facilities locally or elsewhere within the state, whichever best meets the child's needs as determined by the said board of trustees together with the superintendent of schools based upon recommendations of the division of service for crippled children of the Montana state board of health, and if in any school district there is a need of such special provision for crippled children located therein, then the board of county commissioners may levy a tax not to exceed one (1) mill on the dollar on all taxable property, within the district, in addition to all other levies, for school purposes, for the support and maintenance of such crippled children's education, provided that the board of school trustees of any such district requiring such levy must call an election in the manner prescribed by law for such extra levies for the purpose of obtaining the approval of the district to the making of such additional levy and provided further that such election must be held before the 1st day of July.

History: En. Sec. 1, Ch. 163, L. 1949.

# Collateral References

Schools and School Districts 11. 78 C.J.S. Schools and School Districts § 13.

# CHAPTER 15

## COUNTY SUPERINTENDENT OF SCHOOLS

County superintendent of schools-eligible without regard to sex. Section 75-1501.

75-1502. Qualifications for county superintendent of schools.

75-1503. Election of superintendent.

Term of office. 75-1504.

75-1505. Oath and bond. 75-1506. Vacancy, how filled.

75-1507. General powers. 75-1508. Duties of county superintendent, as to state superintendent.

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Visiting schools.
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75-1509.
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75-1517. Notify county treasurer.
75-1518.
         Controversies.
75-1519.
         Power to administer oaths.
75-1520.
         Boundaries of school districts.
75-1521.
         Creation of new districts.
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75-1523. Census reports to be transmitted to superintendent of public instruc-
            tion-penalty.
75-1524. Checking census card index.
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75-1526.
         Annual reports.
75-1527.
         Repealed.
75-1528. Deputy county superintendents of schools—salaries.
75-1529. Publication of annual financial statements of school districts.
75-1530. School trustees to furnish information.
75-1531. Cost of publication.
75-1532. Penalty for noncompliance with act.
         Expenses.
75-1533.
75-1534. County superintendent's traveling expenses.
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75-1501. (950) County superintendent of schools—eligible without regard to sex. All persons otherwise qualified shall be eligible to the office of county superintendent of common schools without regard to sex.

75-1535. County commissioners to audit claims.

History: Ap. p. Sec. 8, p. 621, Cod. Stat. 1871; amd. Sec. 8, p. 118, L. 1874; re-en. Sec. 1095, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 53, L. 1883; re-en. Sec. 1868, 5th Div. Comp. Stat. 1887; re-en. Sec. 1730, Pol. C. 1895; re-en. Sec. 823, Rev. C. 1907; amd. Sec. 300, Ch. 76, L. 1913; re-en. Sec. 950, R. C. M. 1921.

## Collateral References

Schools and School Districts 48(2). 78 C.J.S. Schools and School Districts 94.

47 Am. Jur. 316, Schools, §§ 29 et seq.

75-1502. (950.1) Qualifications for county superintendent of schools. No person shall be eligible to the office of county superintendent of schools in any county of Montana, who, in addition to the qualifications required by the constitution of the state of Montana, is not the holder of a state certificate offered by the state of Montana, granted by endorsement upon graduation from a standard normal school, or college, or university; or who is not the holder of a certificate offered by the state of Montana, designated as a state certificate granted by examination in accordance with the rules and regulations as prescribed by the state board of educational examiners; and who has not had at least three years successful experience as a teacher, principal or superintendent of public schools. The above qualifications shall not prohibit the re-election of present incumbents.

History: En. Sec. 1, Ch. 118, L. 1929.

References

Schools and School Districts 48(2).

References
State ex rel. Flynn v. Ellis, 110 M 43,
46, 98 P 2d 879.

Schools and School Districts

94.

75-1503. (951) Election of superintendent. A county superintendent of schools shall be elected in each organized county in this state at the

general election preceding the expiration of the term of office of the present incumbent, and every four years thereafter.

History: This section originally a part of Sec. 950. Ap. p. Sec. 8, p. 621, Cod. Stat. 1871; amd. Sec. 8, p. 118, L. 1874; re-en. Sec. 1095, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 53, L. 1883; re-en. Sec. 1868, 5th Div. Comp. Stat. 1887; re-en. Sec. 1730, Pol. C. 1895; re-en. Sec. 823, Rev. C. 1907; amd. Sec. 300, Ch. 76, L. 1913; re-en.

Sec. 951, R. C. M. 1921; amd. Sec. 1, Ch. 10, L. 1945.

#### Collateral References

Schools and School Districts 48(1). 78 C.J.S. Schools and School Districts 93.

75-1504. (952) Term of office. The county superintendent shall take office on the first Monday in January next succeeding his election and hold for four years, and until his successor is elected and qualified.

History: This section originally a part of Sec. 950. Ap. p. Sec. 8, p. 621, Cod. Stat. 1871; amd. Sec. 8, p. 118, L. 1874; re-en. Sec. 1095, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 53, L. 1883; re-en. Sec. 1868, 5th Div. Comp. Stat. 1887; re-en. Sec. 1730, Pol. C. 1895; re-en. Sec. 823, Rev. C. 1907; amd. Sec. 300, Ch. 76, L. 1913; re-en.

Sec. 952, R. C. M. 1921; amd. Sec. 2, Ch. 10, L. 1945.

#### Collateral References

Schools and School Districts 48(3). 78 C.J.S. Schools and School Districts 96.

75-1505. (953) Oath and bond. The person so elected shall take the oath or affirmation of office and shall give an official bond as required by law.

History: This section originally a part of Sec. 950. Ap. p. Sec. 8, p. 621, Cod. Stat. 1871; amd. Sec. 8, p. 118, L. 1874; re-en. Sec. 1095, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 53, L. 1883; re-en. Sec. 1868, 5th Div. Comp. Stat. 1887; re-en. Sec. 1730, Pol. C. 1895; re-en. Sec. 823, Rev. C. 1907; amd. Sec. 300, Ch. 76, L. 1913; re-en. Sec. 953, R. C. M. 1921; amd. Sec. 1, Ch. 27, L. 1947.

NOTE.—The official bond of the county superintendent of schools is fixed by sec. 6-201 at \$1,000.

# Collateral References

Schools and School Districts 48(2). 78 C.J.S. Schools and School Districts 95.

75-1506. (954) Vacancy, how filled. The county commissioners of any county, shall, by appointment, fill any vacancy that may occur in the office of county superintendent until the next general election.

History: This section originally a part of Sec. 950. Ap. p. Sec. 8, p. 621, Cod. Stat. 1871; amd. Sec. 8, p. 118, L. 1874; re-en. Sec. 1095, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 53, L. 1883; re-en. Sec. 1868, 5th Div. Comp. Stat. 1887; re-en. Sec. 1730, Pol. C. 1895; re-en. Sec. 823, Rev. C.

1907; amd. Sec. 300, Ch. 76, L. 1913; re-en. Sec. 954, R. C. M. 1921.

# Collateral References

Schools and School Districts 48(3).
78 C.J.S. Schools and School Districts
96.

**75-1507.** (955) **General powers.** The county superintendent shall have the general supervision of the public schools in his county.

History: En. Sec. 1731, Pol. C. 1895; re-en. Sec. 824, Rev. C. 1907; re-en. Sec. 301, Ch. 76, L. 1913; re-en. Sec. 955, R. C. M. 1921.

### Power to Institute Judicial Proceedings

A county superintendent of schools may restrain the improper exercise of ministerial powers by school boards by injunction (or enforce their proper exercise through the medium of mandamus) even though he is not a taxpayer within the particular district involved, and he need not, as a private citizen must, show a personal interest in the controversy. State ex rel. Hoagland v. School District No. 13, 116 M 294, 299, 151 P 2d 168.

#### References

State ex rel. School District No. 86 v. Trumper, 69 M 468, 476, 222 P 1064.

75-1508. (956) Duties of county superintendent, as to state superintendent. He shall carry into effect all instructions of the state superintendent given within his authority. He shall distribute to the proper officers and to teachers all blanks furnished by the state superintendent and needed by such officers and teachers.

History: En. Sec. 1733, Pol. C. 1895; re-en. Sec. 826, Rev. C. 1907; re-en. Sec. 302, Ch. 76, L. 1913; amd. Sec. 6, Ch. 196, L. 1919; re-en. Sec. 956, R. C. M. 1921.

## Collateral References

Schools and School Districts 48(6). 78 C.J.S. Schools and School Districts 99.

### References

State ex rel. School District No. 86 v. Trumper, 69 M 468, 476, 222 P 1064.

(957) Visiting schools. He shall visit every public school under his supervision at least once each official year, and oftener if he shall deem it necessary to increase its usefulness. He shall at such visits carefully observe the conditions of the school, the mental and moral instruction given, methods employed by the teacher in teaching, training, and drill, the teachers' ability, and progress of the pupils. He shall advise and direct the teacher in regard to the instruction, classification, government, and discipline of the school, and the course of study. He shall keep a record of such visits and by memoranda indicate his judgment of the teacher's ability to teach and govern and the condition and progress of the school, which shall be open to inspection to any school trustee. During his visits to the schools of his county, the county superintendent shall consult with the trustees and clerks of all school districts upon all matters relating to the good and welfare of their schools, and shall instruct them, whenever necessary, in their duties relating to the reports to be made out by them and forwarded to him annually as the law requires.

History: En. Sec. 1732, Pol. C. 1895; Ch. 98, L. 1909; amd. Sec. 302, Ch. 76, L. re-en. Sec. 825, Rev. C. 1907; amd. Sec. 1, 1913; re-en. Sec. 957, R. C. M. 1921.

75-1510. (958) Trustees' meetings. The county superintendent may from time to time in convenient places hold trustees' meetings, at which matters relating to the good of the school shall be discussed. Trustees shall be entitled to mileage at a rate not to exceed seven cents (7c) per mile for actual attendance at such trustees' meetings where the distance necessarily traveled is in excess of three miles. All such claims of trustees shall be paid from district funds.

History: En. Sec. 302, Ch. 76, L. 1913; amd. Sec. 6, Ch. 196, L. 1919; re-en. Sec. 958, R. C. M. 1921; amd. Sec. 2, Ch. 16, L. 1933.

NOTE.—See sec. 59-801 as to mileage.

## 75-1511. (959) Repealed—Chapter 142, Laws of 1949.

## Repeal

This section (Sec. 1739, Pol. C. 1895; Sec. 302, Ch. 76, L. 1913; Sec. 6, Ch. 196, L. 1919; Sec. 2, Ch. 186, L. 1943), authorizing the county superintendent to apply for temporary teaching certificates, was repealed as Sec. 959, Revised Codes, 1935, by Sec. 11, Ch. 142, Laws 1949.

**75-1512.** (960) **Member of county board of educational examiners.** He shall serve on the county board of educational examiners.

History: En. Sec. 302, Ch. 76, L. 1913; re-en. Sec. 960, R. C. M. 1921.

75-1513. (961) Preside at institutes. He shall preside over all teachers' institutes held in his county, and shall elect suitable persons to instruct therein from the list of teachers commissioned by the state board of education, and recommended by the state superintendent.

History: En. Sec. 302, Ch. 76, L. 1913; re-en. Sec. 961, R. C. M. 1921.

**75-1514.** (962) **School libraries.** He shall exercise supervision over the school libraries of the county, and aid in the selection of books for the same.

History: En. Sec. 302, Ch. 76, L. 1913; re-en. Sec. 962, R. C. M. 1921.

**75-1515.** (963) **Truant officer.** He shall act as truant officer in districts of the third class when no other provision is made.

History: En. Sec. 302, Ch. 76, L. 1913; re-en. Sec. 963, R. C. M. 1921.

75-1516. (964) Apportionment of school moneys—warrants. The county superintendent shall apportion all school moneys to the school districts in accordance with the provisions of this title quarterly, and he may make apportionments at such other times as may be required or deemed necessary for the convenience of school officers. He shall certify to the several district clerks and county treasurer the amount so apportioned to the several districts, and the trustees shall draw their warrants on the county treasurer in favor of persons entitled to receive the same. Such warrants shall show for what purpose the money is required, and no such warrant shall be drawn unless there is money in the treasury to the credit of such district; provided, that school trustees shall have the authority to issue warrants in anticipation of school moneys which have been levied, but not collected, for the payment of current expenses of schools, but such warrants shall not be drawn in any amount in excess of the sum already levied.

History: En. Sec. 302, Ch. 76, L. 1913; re-en. Sec. 964, R. C. M. 1921; amd. Sec. 1, Ch. 82. L. 1925.

NOTE.—The reference to the word "title" as used in the above section includes sections 75-1807 and 75-1815. A portion of this section as amended by Ch. 82, Laws 1925, has been omitted as special being applicable to the years 1924 and 1925 only.

# Issuance of Warrants

Under section 1737 of the Political Code of 1895, being the same as the foregoing without the proviso, school trustees were prohibited from drawing a warrant to pay any outstanding claim unless there was money in the county treasury to the credit of the district. Jay v. School District No. 1, 24 M 219, 228, 61 P 250.

Though, under this section and section 75-1629, school trustees may issue warrants in anticipation of school moneys from uncollected taxes to the extent of the sum levied, the legislative assembly did not extend the privilege of going on the pay-

as-you-go plan to school districts, as it did to cities and towns (11-1301, 11-1302). Farbo v. School District No. 1, 95 M 531, 534 et seq., 28 P 2d 455.

#### Residence for Census Purposes

Under provisions of the school law found in the fifth division of compiled statutes of 1887, similar in most respects to those now in force, providing for children absent from home attending private schools to be included in the census list of the district where their parents reside, and empowering the county superintendent to apportion all school moneys to the school district in proportion to the number of school census children as shown by the return of the district clerk, where certain children were returned by said clerk as of one district, while their fathers resided in another district, it was proper for the county superintendent to transfer these children to the districts where their fathers resided and apportion the school moneys accordingly. School District No. 7 v. Patterson, 10 M 17, 24 P 698.

#### References

State ex rel. Knight v. Cave, 20 M 468, 473, 52 P 200; State v. McGraw, 74 M 152, 161, 240 P 812.

#### Collateral References

Schools and School Districts 19(1). 78 C.J.S. Schools and School Districts 21.

Right of school district to maintain action based on misapportionment of school money. 105 ALR 1273.

Tort liability of public schools and institutions of higher learning. 160 ALR 7.

75-1517. (965) Notify county treasurer. He shall notify the county treasurer to withhold payment of warrants issued to teachers not holding valid certificates.

History: En. Sec. 302, Ch. 76, L. 1913; re-en. Sec. 965, R. C. M. 1921.

#### Collateral References

Schools and School Districts 48(6). 78 C.J.S. Schools and School Districts 99.

75-1518. (966) Controversies. He shall decide all matters in controversy arising in his county in the administration of the school law or appealed to him from the decision of school officers or boards. An appeal may be taken from his decision, in which case a full written statement of the facts, together with the testimony and his decision in the case, shall be certified to the state superintendent for his decision in the matter, which decision shall be final, subject to adjudication or the proper legal remedies in the state courts.

History: En. Sec. 1735, Pol. C. 1895; re-en. Sec. 828, Rev. C. 1907; re-en. Sec. 302, Ch. 76, L. 1913; re-en. Sec. 966, R. C. M. 1921.

# Action against State Appointee

In the Peterson case, the court was without jurisdiction, for the reason that Peterson had not exhausted the remedy by appeal from the action of the board of trustees, provided for in this section. That ruling has no application to an action commenced by a school officer (O'Brien v. School District, 68 M 432, 219 P 1113), against a state appointee, and there is no provision of law by which such a one could be brought before any school official for a determination of the question involved. State ex rel. Johnson v. Kassing, 74 M 25, 28, 238 P 582.

# Dismissal of District Superintendent

Section 75-2411, providing specifically for appeal to the county superintendent from an order dismissing a teacher, has no application to an order of dismissal of a district school superintendent, the latter order being governed by this section. State ex rel. Howard v. Ireland, 114 M 488, 500, 138 P 2d 569.

# Estoppel of State Superintendent

An informal letter written by the superintendent of public instruction to a county superintendent based on corre-

spondence between them relative to an order of the latter abolishing a school district and approving his action did not debar the state superintendent from thereafter passing upon the same question when presented upon a formal appeal from the county superintendent's decision. State ex rel. School District No. 86 v. Trumper, 69 M 468, 476, 222 P 1064.

# Exhaustion of Administrative Remedy Required

In view of this section, a court will not assume jurisdiction of a controversy arising out of the determination by a school board of the question whether a pupil was a resident of the particular district, until the remedy thus provided has been exhausted, unless the board has acted without or in excess of its jurisdiction. Peterson v. School Board, 73 M 442, 447, 226 P 670. See also Kelsey v. School District No. 25, 84 M 453, 458, 276 P 26.

Where plaintiff seeking a writ of mandate to annul an order of a county school superintendent directing the abandonment of a school district, under this section had the right of appeal to the state superintendent, and, if unsuccessful there, could have had the matter passed upon by the district court on writ of review, but did not pursue such remedy, the writ of mandate was not available to him. (See sec. 93-9103.) State ex el. McDonnell v. Musburger, 111 M 579, 584, 111 P 2d 1038.

# Injunction of Action Outside Jurisdiction

This section which provides that all school controversies shall first be submitted to the county and state superintendents, subject to adjudication in the courts, has no application to an action for injunction by a taxpayer based upon an attempt on the part of the board of trustees to proceed to the acquisition of a site for a school building in excess of its jurisdiction. Nichols v. School District No. 3, 87 M 181, 188, 287 P 624.

# Interested Party

In the absence of express provision in this section, as to who may appeal from the decision of a county superintendent of schools, any person beneficially interested may appeal, and a taxpayer or a member of the board of trustees of the district respecting which the decision was made is such an interested party. State ex rel. School District No. 86 v. Trumper, 69 M 468, 476, 222 P 1064.

## Jurisdiction

In the absence of an affirmative showing of want of jurisdiction in the superintendent of public instruction on appeal from a decision of a county superintendent, jurisdiction and regularity of the proceedings will be presumed, and so long as the former acts legally and within the powers expressly conferred courts will not interfere by certiorari. State ex rel. School District No. 86 v. Trumper, 69 M 468, 476, 222 P 1064.

Where an order of a board of trustees dismissing a district school superintendent for cause was void because he had not been granted a hearing (a well-defined public policy declared by decisions of the supreme court), which order was reversed on appeal to the county superintendent, whereupon the board appealed to the state superintendent of instruction who found in favor of the board, the action of the board and the decision of the state superintendent were void for want of jurision and certification would be granted. State ex rel. Howard v. Ireland, 114 M 488, 501, 138 P 2d 569.

# Time for Appeal

No time has been fixed by statute within which an appeal may be taken from the decision of a county superintendent of schools, and in the absence of regulations by the state superintendent with relation thereto, the appeal may be taken within a reasonable time after the making of the decision, a limitation of six months being reasonable. State ex rel. School District No. 86 v. Trumper, 69 M 468, 476, 222 P 1064.

#### References

State ex rel. Robinson v. Desonia, 67 M 201, 205, 215 P 220; State ex rel. Saxtorph v. District Court, 128 M 353, 275 P 2d 209, 217.

## Collateral References

Schools and School Districts 48(6). 78 C.J.S. Schools and School Districts 99.

75-1519. (967) Power to administer oaths. The county superintendent shall have power to administer the oath of office to all subordinate school officers, and in case of appeal to him from the decision of school officers or board, or revocation of the certificate of a teacher, or in any other controversy or question brought to or coming before him in the administration of school laws for opinion, order, or decision, he shall have the power to administer oaths to witnesses; but he shall not receive pay for administering such oaths.

History: En. Sec. 1736, Pol. C. 1895; 302, Ch. 76, L. 1913; re-en. Sec. 967, R. C. re-en. Sec. 829, Rev. C. 1907; amd. Sec. M. 1921.

75-1520. (968) Boundaries of school districts. The county superintendent shall inquire and ascertain whether the boundaries of school districts in his county are definitely and plainly described in the records of the board of county commissioners, and keep in his office a full and correct transcript of such boundaries. In case the boundaries of districts are conflicting, or are incorrectly described, he shall change, harmonize, and describe them, and make a report of such action to the commissioners; and on being ratified by the commissioners, the boundaries and descriptions so made shall be the legal boundaries and descriptions of the districts of

that county. The county superintendent shall furnish the several district clerks with descriptions of the boundaries of their respective districts.

History: En. Sec. 14, p. 622, Cod. Stat. 1871; re-en. Sec. 14, p. 121, L. 1874; re-en. Sec. 1101, 5th Div. Rev. Stat. 1879; re-en. Sec. 1874, 5th Div. Comp. Stat. 1887; re-en. Sec. 1741, Pol. C. 1895; re-en. Sec. 834, Rev. C. 1907; re-en. Sec. 302, Ch. 76, L. 1913; re-en. Sec. 968, R. C. M. 1921.

## Noncontiguous Territory

County officials could be prohibited from taking into consideration 200 Indian children residing in noncontiguous territory within which no public schools were maintained, and which was illegally attached in 1901 to a school district, in apportioning school funds to such district, since the territory comprising 210 square miles lying many miles from the district was not, and never had been a part of such district, and the children affected did not reside in any school district, and could not be taken into consideration in apportionment of school moneys since under this section noncontiguous territory may not be included in a district. State ex rel. Lantz v. Morris, 113 M 187, 190, 126 P 2d 1101.

## Collateral References

Schools and School Districts 48(6). 78 C.J.S. Schools and School Districts 99.

47 Am. Jur. Schools, p. 309, §§ 17 et seq.; p. 456, §§ 216 et seq.

Separation because of race, color, or religion in social activities in connection with public schools. 50 ALR 1267 and 134 ALR 1274.

Discretion of administrative officers as to changing boundaries of school districts. 65 ALR 1523 and 135 ALR 1096.

Right of political division to challenge acts or proceedings by which its boundaries or limits are affected. 86 ALR 1367, 1376.

Equivalence of educational facilities extended by public school system to members of white and members of colored race. 103 ALR 713.

Unionization, centralization, or consolidation of school districts as affecting indebtedness and property of the individual districts, 121 ALR 826.

**75-1521.** (969) **Creation of new districts.** He shall hear and pass upon all petitions for the creation of new school districts.

History: En. Sec. 302, Ch. 76, L. 1913; re-en. Sec. 969, R. C. M. 1921.

- 75-1522. (970) Abandonment of school districts. (1) He shall attach to contiguous districts territory not a part of any district except as hereinafter provided, and he must declare a school district abandoned when a school has not been operated in the district during a period of three (3) consecutive years. The county superintendent in determining the question of abandoning any school district under this act must include any period of time that may have elapsed before the approval of this act, except that the period of abandonment for these districts which have during the school years 1958-1959 provided transportation or in lieu of transportation, payments, shall not commence until July 1, 1959; provided, however, that the county superintendent of schools shall notify each school district which has not operated a school for two (2) years, that the non-operation of a school for another year will bring about abandonment: Failure of the county superintendent to give such notification does not, however, protect the district from abandonment.
- (2) The abandoned territory shall be attached to a contiguous district or districts. Whenever there are five (5) or more children in abandoned territory eligible for attendance in an elementary school as determined by the county superintendent and residing more than three (3) miles from an established school in the district to which the abandoned territory is attached, the school trustees shall provide a school in such abandoned territory when requested so to do by the parents of at least three (3) of

such children. In determining whether such children reside more than three (3) miles from an established school in the district, the measurement must be by the shortest regularly traveled route. Whenever a school district is ordered abandoned and there is any indebtedness outstanding against the district represented either by registered warrants, or bonds, or both, and there is not sufficient money in the funds of the district to pay the same, all money in the funds of the district shall be set aside and applied in payment of such indebtedness, and there shall be levied annually, in the manner provided by law, a tax against all property within the boundaries of such district, as the same existed when such indebtedness was incurred, sufficient to pay such indebtedness as it matures, with all interest becoming due thereon.

All funds of an abandoned district, after all the debts of the district have been paid, shall be placed in the general fund of the district or districts to which its territory is attached on order of the county superintendent. If the territory of an abandoned district is divided and a part attached to two (2) or more districts, the funds of the abandoned district, after all its debts have been paid, shall be apportioned by the county superintendent between the districts to which such territory is attached in proportion to the assessed value of the property attached to each thereof. The school buildings, if any, in the abandoned territory, shall not be disposed of or removed unless approval for disposal or removal is given by a majority vote of the residents of the abandoned district present at a meeting in such school buildings, such meeting to be duly called by the board of trustees of the consolidated district. The county superintendent shall have power to declare a school district abandoned when there is an insufficient number of residents of said district who could qualify or when the available residents refuse to qualify in sufficient number as trustees and clerk for said district so that no legal board can be formed or a quorum obtained so that meetings of a board of trustees of such district can be held. Whenever a school district is ordered abandoned upon order of the county superintendent of schools in such case, then he shall attach said school district to a contiguous district or districts as herein provided.

History: En. Sec. 302, Ch. 76, L. 1913; amd. Sec. 6, Ch. 196, L. 1919; re-en. Sec. 970, R. C. M. 1921; amd. Sec. 1, Ch. 65, L. 1929; amd. Sec. 1, Ch. 84, L. 1931; amd. Sec. 1, Ch. 168, L. 1943; amd. Sec. 1, Ch. 109, L. 1951; amd. Sec. 1, Ch. 242, L. 1955; amd. Sec. 1, Ch. 121, L. 1959.

# Abandonment of Nonoperating District

County superintendent of schools properly ordered abandonment of elementary school district where school had not been maintained within said district during the last three consecutive school years and an average of four or less pupils had been furnished transportation to another elementary school. State ex rel. Knaup v. Holland, 132 M 569, 319 P 2d 516, 518.

# Consolidation Law Inapplicable Section 75-1813 relating to the consoli-

dation of school districts, has nothing to do with the abandonment of a school district under this section and is not dependent upon any question of whether school was held within either or any of the districts in question; if there be any conflict, this section controls in point of time. State ex rel. McDonnell v. Musburger, 111 M 579, 582, 111 P 2d 1038.

# Exhaustion of Administrative Remedy Required

Where plaintiff seeking a writ of mandate to annul an order of a county school superintendent directing the abandonment of a school district, under section 75-1518 had the right of appeal to the state superintendent, and, if unsuccessful there, could have had the matter passed upon by the district court on writ of review, but did not pursue such remedy, the writ of man-

date was not available to him. (See sec. 93-9103.) State ex rel. McDonnell v. Musburger, 111 M 579, 584, 111 P 2d 1038.

## Transportation of Pupils

Transportation is balanced against school attendance in the district and does not refer to transportation of high school students whose transportation is not provided by such district. State ex rel. Knaup v. Holland, 132 M 569, 319 P 2d 516, 518. On abandonment of an elementary

school district no student eligible to attend high school is deprived of the opportunity of attending school. Transportation must be provided by the high school district paid for by state and county under section 75-3414. State ex rel. Knaup v. Holland, 132 M 569, 319 P 2d 516, 518.

#### References

Read v. Stephens, 121 M 508, 193 P 2d 626, 627.

#### Collateral References

Schools and School Districts 36, 44. 78 C.J.S. Schools and School Districts §§ 27, 59. 47 Am. Jur. 456, Schools, §§ 216 et seq.

Title to buildings when school lands revert for nonuse for school purposes. 28 ALR 2d 564.

(971) Census reports to be transmitted to superintendent of public instruction—penalty. It shall be the duty of the county superintendent of schools to transmit within thirty (30) days after he receives the school census from the district clerk, the duplicate copy of the census furnished by the clerk showing the name, sex, age, and the date of birth of each child under twenty-one (21) years of age residing in the county, together with the names of the parents or guardians of such children to the superintendent of public instruction, together with such other census reports as the latter may require. No county superintendent shall be paid his salary for the last two months of his official year until he presents to the county commissioners receipts from the superintendent of public instruction for such annual census reports.

History: En. Sec. 1, Ch. 17, L. 1907; Sec. 838, Rev. C. 1907; re-en. Sec. 302. Ch. 76, L. 1913; amd. Sec. 6, Ch. 196, L. 1919; re-en. Sec. 971, R. C. M. 1921; amd. Sec. 3, Ch. 118, L. 1927; amd. Sec. 1, Ch. 141, L. 1955.

# Collateral References

Schools and School Districts \$\infty 48(6). 78 C.J.S. Schools and School Districts § 99.

75-1524. (971.1) Checking census card index. The superintendent of public instruction shall check for duplications the card indexes as submitted by the county superintendents. If duplications between counties are found, such duplications shall be reported by the superintendent of public instruction to the county superintendents of the counties in which the names are listed with instructions to the county superintendents to ascertain the actual place of residence of such families and to report findings. Failure of any county superintendent to report within fifteen days shall constitute authority for the superintendent of public instruction to remove the names in question from the list of that county.

History: En. Sec. 4, Ch. 118, L. 1927.

78 C.J.S. Schools and School Districts § 86.

Collateral References Schools and School Districts 47.

75-1525. (972) Records. He shall keep a record of his official acts. He shall preserve all books, maps, charts, and apparatus sent him as school officer, or belonging to his office. He shall file all reports and statements from teachers and school boards, and shall turn them over to his successor in office. He shall also provide a seal which shall be the official seal of the

county superintendent by which his official acts may be authenticated. The superintendent of public instruction shall provide the design of the seal.

History: En. Sec. 1734, Pol. C. 1895; re-en. Sec. 827, Rev. C. 1907; re-en. Sec. 302, Ch. 76, L. 1913; amd. Sec. 6, Ch. 196, L. 1919; re-en. Sec. 972, R. C. M. 1921.

## Collateral References

Schools and School Districts \$28(6). 78 C.J.S. Schools and School Districts \$99 et seq.

75-1526. (973) Annual reports. He shall, on or before the first day of September of each year, make and transmit an annual report to the superintendent of public instruction, containing such statistics, items, and statements relative to the schools of the county as may be required and prescribed by the state superintendent. Such reports shall be made upon and conform to the blanks furnished by the state superintendent of public instruction for that purpose. He shall not be paid his salary for the last two months in his official year until he presents to the county commissioners the receipt of the superintendent of public instruction for such annual report.

History: En. Sec. 1740, Pol. C. 1895; re-en. Sec. 833, Rev. C. 1907; re-en. Sec. 302, Ch. 76, L. 1913; amd. Sec. 1, Ch. 81, L. 1917; amd. Sec. 7, Ch. 196, L. 1919; re-en. Sec. 973, R. C. M. 1921.

## Collateral References

47 Am. Jur., Schools, p. 324, §§ 42 et seq.; p. 360, §§ 89 et seq.

# 75-1527. (974) Repealed—Chapter 108, Laws of 1949.

## Repeal

This section (Sec. 302, Ch. 76, L. 1913; Sec. 1, Ch. 97, L. 1925), relating to the days when the office of the county super-

intendent of schools was to be kept open, was repealed as Sec. 974, Revised Codes, 1935, by Sec. 2, Ch. 108, Laws 1949. For present law, see sec. 16-2414.

75-1528. (975) Deputy county superintendents of schools—salaries. The boards of county commissioners of the several counties in the state may appoint one chief deputy county superintendent of schools, when such a chief deputy is recommended by the county superintendent of schools, and in addition, such commissioners shall have the power to fix, determine and appoint the number of deputies and assistants needed for the faithful and prompt discharge of the duties of the office of the county superintendent of schools. The salaries of such deputies and assistants shall be fixed by the board of county commissioners in an amount not to exceed ninety per cent (90%) of the salary of the county superintendent of schools.

History: En. Sec. 302, Ch. 76, L. 1913; amd. Sec. 1, Ch. 110, L. 1917; amd. Sec. 1, Ch. 193, L. 1919; re-en. Sec. 975, R. C. M. 1921; amd. Sec. 1, Ch. 20, L. 1939; amd. Secs. 1, 2, Ch. 194, L. 1947.

# Collateral References

Schools and School Districts 48(1), 78 C.J.S. Schools and School Districts 92.

75-1529. (976) Publication of annual financial statements of school districts. It shall hereafter be the duty of all county superintendents of schools to publish annually within ninety days of the close of the school year a statement of the financial conditions and transactions of all school districts in the county; said report shall be published once in some newspaper of general circulation printed and published in the county, and shall contain the following information:

First.—A statement of all moneys received by each school district in the county, and from what source derived.

Second.—A summary of all the moneys paid out, in each of the school districts of the county, showing the total amount expended in each district

for all general fund expenses, for all transportation fund expenses, for all bus depreciation reserve fund expenses, for all expenses of the self-supporting school lunch fund, for all tuition fund expenses, for all retirement fund expenses, for all debt service fund expenses, for all adult education fund expenses, for all housing and dormitory fund expenses, for all expenses of the miscellaneous federal funds for special purposes, for all building fund expenses and any other miscellaneous expense.

History: En. Sec. 1, Ch. 164, L. 1921; re-en. Sec. 976, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1961.

75-1530. (977) School trustees to furnish information. It shall be the duty of all boards of school trustees to furnish to the county superintendent of schools of their county at such times and in such form as may be required by said county superintendents, the information specified in the preceding section with reference to their several school districts.

History: En. Sec. 2, Ch. 164, L. 1921; re-en. Sec. 977, R. C. M. 1921.

Collateral References

Schools and School Districts 48(6). 78 C.J.S. Schools and School Districts 99.

**75-1531.** (978) **Cost of publication.** The cost of the publication herein required to be made shall be borne by the county and paid out of the general fund thereof.

History: En. Sec. 3, Ch. 164, L. 1921; re-en. Sec. 978, R. C. M. 1921.

75-1532. (979) Penalty for noncompliance with act. The failure to comply with the requirements of this act on the part of any officer charged with the performance of any duty hereunder, shall constitute a misdemeanor and be punishable accordingly.

History: En. Sec. 4, Ch. 164, L. 1921; re-en. Sec. 979, R. C. M. 1921. Collateral References

Schools and School Districts 48(8), 63(3).
78 C.J.S. Schools and School Districts \$\ 127, 140.

**75-1533.** (980) **Expenses.** The county commissioners shall furnish the county superintendent with a suitable office. They shall also furnish him or her with all necessary stationery and postage.

History: En. Sec. 1742, Pol. C. 1895; amd. Sec. 1742, p. 122, L. 1901; amd. Sec. 303, Ch. 76, L. 1913; amd. Sec. 2, Ch. 110, L. 1917; re-en. Sec. 980, R. C. M. 1921.

Collateral References

Schools and School Districts \$\infty 48(5, 6).
78 C.J.S. Schools and School Districts
\$99.

75-1534. (4948) County superintendent's traveling expenses. Each county superintendent of schools shall be paid all necessary traveling expenses actually incurred in the discharge of his or her duties.

History: En. Sec. 3195, Rev. C. 1907; amd. Sec. 3, Ch. 110, L. 1917; re-en. Sec. 4948, R. C. M. 1921.

Collateral References

Schools and School Districts 48(5). 78 C.J.S. Schools and School Districts 98.

75-1535. (4949) County commissioners to audit claims. The boards of county commissioners of the several counties of the state are hereby authorized and directed to audit and allow such traveling expenses of the superin-

tendent of schools of the respective counties, quarterly, and the same shall be paid out of the general fund of such county.

History: En. Sec. 2, Ch. 27, L. 1907; Sec. 3196, Rev. C. 1907; re-en. Sec. 4949, R. C. M. 1921. Collateral References
Counties 204(1).
20 C.J.S. Counties § 305.

# CHAPTER 16

# SCHOOL TRUSTEES

Section 75-1601. Qualifications of. 75-1602. Number of. 75-1603. Elections. 75-1604. Election in districts of second and third class—nominations. 75-1605. Conduct of election. 75-1606. Election in districts of first class-nominations and conduct of elections. 75-1607. Board of trustees to call election. 75-1608. Same-notice of. 75-1609. Hours of election. 75-1610. Judges. 75-1611. Ballots and method of voting. 75-1612. 75-1613. Poll and tally list, certificate of judges and canvass of votes. Term of office-vacancy-oath of trustees. 75-1614. Vacancy in school board. 75-1615. Trustees—how removed. Vacancy in office of clerk. 75-1616. 75-1617. Rearrangement of terms to prevent the election of a majority of the trustees. Qualifications of electors. 75-1618. 75-1619. Challenges—oath of voters. 75-1620. Expenses of election. 75-1621. Organization. 75-1622. 75-1623. Meetings. Quorum. 75-1624. Power over property. 75-1625. Attendance of elementary school pupil at school outside of state. 75-1626. Dissatisfied person may appeal. 75-1627. Repealed. 75-1628. Night schools. 75-1629. Issuance of warrants against anticipated revenues. 75-1630. Transfer of funds. 75-1631. Call of special election. 75-1632. Duties of trustees. 75-1632.1. Trustees of school districts annually to decide by whom audit to be made. 75-1633. Use of schoolrooms for adult education classes—tax levy. 75-1634. School trustees may sell property—when—notice—hearing—appeals. 75-1635. Validation of acts of school trustees concerning building and equipping dormitories. 75-1636. Leasing of county lands for school purposes-limitation of term. 75-1637. Letting contracts and furnishing supplies, trustees not to be interested in-advertising for bids required, when. Liability. 75-1638. 75-1639. Misdemeanor-penalty. 75-1640. Limitation on purchase of maps, charts, etc.

**75-1601.** (985) **Qualifications of.** Any person, male or female, who is a qualified voter at any election under this act, shall be eligible to the office of school trustee in such district.

History: En. Sec. 500, Ch. 76, L. 1913; re-en. Sec. 985, R. C. M. 1921.

References
Missoula County F. H. School v. Smith,
91 M 419, 425, 8 P 2d 800.

Collateral References

Schools and School Districts 53(2).

78 C.J.S. Schools and School Districts § 106. 47 Am. Jur. 316, Schools, §§ 29 et seq.

(986) **Number of.** In districts of the first class, the number of trustees shall be seven, in districts of the second class the number of trustees shall be five, and in districts of the third class the number of trustees shall be three.

History: Ap. p. Sec. 1770, Pol. C. 1895; amd. Sec. 1, p. 136, L. 1897; amd. Sec. 1, Ch. 69, L. 1907; Sec. 850, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1911; amd. Sec. 501, Ch. 76, L. 1913; re-en. Sec. 986, R. C. M. 1921.

References

State ex rel. Wildin v. Eickoff, 84 M 539,

548, 276 P 954; State ex rel. Hoagland v. School District No. 13, 116 M 294, 297, 151 P 2d 168.

#### Collateral References

Schools and School Districts 52. 78 C.J.S. Schools and School Districts § 105. 47 Am. Jur. 316, Schools, §§ 29 et seq.

75-1603. (987) **Elections.** An annual election of school trustees shall be held in each school district in the state on the first Saturday in April of each year at the district schoolhouse, if there be one, and if there be none, at a place designated by the board of trustees. In districts of the third class having more than one schoolhouse where school is held, one trustee must be elected from persons residing where such outside schools are located.

History: Ap. p. Sec. 1880, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 243, L. 1891; amd. Sec. 1770, Pol. C. 1895; amd. Sec. 1, p. 136, L. 1897; amd. Sec. 1, p. 57, L. 1899; amd. Sec. 1, Ch. 69, L. 1907; Sec. 850, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1911; amd. Sec. 502, Ch. 76, L. 1913; amd. Sec. 7, Ch. 81, L. 1917; re-en. Sec. 987, R. C. M. 1921.

NOTE.—The last sentence of this section relating to election of school trustees, violates the Constitution, section 13, Article IX and section 10, Article XI. Opinions of Attorney General, Vol. 7, p. 96. Similar opinion in Opinion No. 112, Vol. 15.

#### References

State ex rel. Bray v. Long, 21 M 26, 29, 52 P 645; State ex rel. Burns v. Lacklen, 129 M 243, 284 P 2d 998, 999.

#### Collateral References

Elections 37, 38. 29 C.J.S. Elections §§ 77, 78. 47 Am. Jur. 316, Schools, §§ 29 et seq.

(988) Election in districts of second and third class—nominations. In districts of the second and third class, the names of all candidates for membership on the school board must be received and filed by the clerk and posted at each polling place at least five days next preceding the election. Any five qualified electors of the district may file with the clerk the nominations of as many persons as are to be elected to the school board at the ensuing election.

History: En. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 988, R. C. M. 1921.

#### References

State ex rel. Wildin v. Eickoff, 84 M 539, 546 et seq., 276 P 954.

75-1605. (989) Conduct of election. In districts of the second and third classes, the election of school trustees shall be held and conducted under the supervision of the board of school trustees. The clerk of the school district must, not less than fifteen days before the election required under this act, post notices in three public places in said district, and in incorporated cities in each ward, which notices must specify the time and place of election, and the hours during which the polls will be open. The trustees must appoint by an order entered in their records three qualified electors of said district, to act as judges at such election, and the clerk of the district shall notify them by mail of their appointment. If the judges named are not present at the time for opening the polls, the electors present may appoint judges, and the judges so appointed shall designate one of their number to act as clerk. The voting must be by ballot, without reference to the general election laws in regard to nominations, form of ballot, or manner of voting, and the polls shall be open for such length of time as the board of trustees may order; provided, that such polls must be open from two p. m. to six p. m.

History: En. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 989, R. C. M. 1921.

# P 961; Hehn v. Olson, — M —, 358 P 2d 431, 435.

#### References

Jersey v. Peacock, 70 M 46, 48, 223 P 903; State ex rel. Wildin v. Eickoff, 84 M 539, 547, 276 P 954; Buckhouse v. Joint School District No. 28, 85 M 141, 145, 277

Collateral References

Elections 27, 40-42, 51, 166, 199, 206,

29 C.J.S. Elections §§ 57-59, 61, 62, 72-74, 156, 157, 163, 166, 191, 198.

75-1606. (990) Election in districts of first class—nominations and conduct of elections. In districts of the first class, no person shall be voted for or elected as trustee unless he has been nominated therefor at a bona fide public meeting, held in the district not more than sixty (60) days nor less than forty (40) days before the day of election, and at which at least twenty (20) qualified electors were present, and a chairman and secretary were elected, and a certificate of such nomination, setting forth the place where the meeting was held, giving the names of the candidates in full, and if there are different terms to be filled, the term for which such candidate was nominated, duly certified by the chairman and secretary of such meeting, shall be filed with the district clerk within ten (10) days after such public meeting. The nomination and election of any person shall be void, unless he was nominated at a meeting as above provided at which at least twenty (20) qualified electors were present, and his nomination certified and filed as aforesaid, and the board of trustees acting as a canvassing board shall not count any votes cast for any person, unless he has been so nominated and a certificate thereof filed as herein required. In the event there be held only one (1) such public meeting, and only one (1) candidate be nominated for each term to be filled then and in that event no election need be held and the clerk of such district shall certify such facts to the board of trustees of the district, acting as a board of canvassers who shall thereupon certify the election of such persons to the county superintendent of schools.

History: En. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 990, R. C. M. 1921; amd. Sec. 1, Ch. 205, L. 1943; amd. Sec. 1, Ch. 130, L. 1945.

NOTE.—This section, as it existed in 1914, violated section 10, Article XI and section 11, Article IX and section 5, Article III of the Constitution, as depriving electors of the right to express free choice of school trustees. Opinions of Attorney General, Vol. 5, p. 477.

## Time for Nomination

In computing whether a nomination was made at least 40 days before the day of election, resort must be had to the legislative enactment, section 90-407, which requires that in computing time the first day be excluded and the last day included; thus where date of election was April 3, 1954 the last day for nominating meetings was February 22. State ex rel. Burns v. Lacklen, 129 M 243, 284 P 2d 998, 1002, overruling State ex rel. St. George v. Justice Court, 80 M 53, 257 P 1034, State

ex rel. Bevan v. Mountjoy, 82 M 594, 268 P 558, Novack v. Pericich, 90 M 91, 300 P 240, and State ex rel. Sullivan v. District Court, 122 M 1, 196 P 2d 452.

Collateral References

Elections \$\ 91, 94, 104.

75-1607. (991) Board of trustees to call election. The board of trustees shall, at least thirty days before the annual election of school trustees, by an order entered upon the minutes of their meeting, designate and establish a suitable number of polling places and create an equal number of election precincts to correspond, and define the boundaries thereof.

History: En. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 991, R. C. M. 1921.

# Presumption of Regular Election

In the absence of proof in support of the contention that the trustees of a joint school district had not established polling places nor defined the boundaries of election precincts for the holding of the election above referred to as required by this section and that therefore the election was invalid, it will be presumed that official duty had been regularly performed. Buckhouse v. Joint School District No. 28, 85 M 141, 145, 277 P 961.

#### Collateral References

Elections 201. 29 C.J.S. Elections § 195.

75-1608. (992) Same—notice of. The district clerk shall, at least fifteen days before the election in districts of the first class, give notice of the election to be held in all such districts, by posting a notice thereof in three public places in the district, and in incorporated cities and towns in each ward, which notices must specify the time and place of election, the number of trustees, and the terms for which they are to be elected, and the hours during which the polls will be open. Whenever, in the judgment of the board of trustees, the best interest of the district will be served by the publication of such notices of election in some newspaper in the county, they may, by an order entered on the minutes of their meeting, direct the district clerk to publish the notice of election required to be given in districts of the first class, in some newspaper in the county.

History: En. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 992, R. C. M. 1921.

Collateral References

Elections \$\infty 40-42.
29 C.J.S. Elections \\$\\$ 72-74.

75-1609. (993) Hours of election. In districts of the first class the polls must be opened at twelve o'clock (12:00) noon and kept open until eight o'clock (8:00) p. m.

History: En. Sec. 6, p. 138, L. 1897; re-en. Sec. 855, Rev. C. 1907; amd. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 993, R. C. M. 1921; amd. Sec. 1, Ch. 135, L. 1947. Collateral References
Elections 206-208.
29 C.J.S. Elections \$ 198.

75-1610. (994) Judges. The board of district trustees shall, at least ten days before the day of the annual election of trustees in any district of the first class, appoint three qualified electors of the district for each polling place established to act as judges of election, and the district clerk shall notify such persons by mail of their appointment. Such judges shall designate one of their number to act as clerk of such election. If the judges appointed, or any of them, are not present at the time for the opening of the polls, the electors present may appoint judges, who must be qualified electors, to act in the place of those who are absent.

History: En. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 994, R. C. M. 1921.

Collateral References Elections ≈51. 29 C.J.S. Elections §§ 57-59, 61, 62. 75-1611. (995) Ballots and method of voting. In districts of the first class, the ballot shall show the name or names of the candidates and the length of time for which they are to be elected. These ballots shall be as near as possible in the following form:

For School Trustees:

For three (3) year term.

Vote for Three:

John Abner William Brown Adam Smith

For one (1) year term. George Davis

History: En. Sec. 9, p. 139, L. 1897; re-en. Sec. 858, Rev. C. 1907; amd. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 995, R. C. M. 1921. Collateral References

Elections 172.

29 C.J.S. Elections §§ 161, 163, 166.

(996) Poll and tally list, certificate of judges and canvass of votes. At every election held under this act, a poll list shall be kept by the judges and clerk at each polling place, and immediately after the close of the polls the judges shall count the ballots, and if there be more ballots than votes cast the judges must draw by lot from the ballots, without seeing them, sufficient number of ballots to make the ballots remaining correspond with the number of votes cast. The clerk shall write down in alphabetical order in a poll book provided for that purpose the name of every person voting at the time he deposits his ballot. There shall also be provided a tally list for each polling place; after the ballots have been counted and made to agree with the poll list the judges shall proceed to count them. The clerk shall enter in the tally list the name of every person voted for as trustee, and the term, and tally opposite his name the number of votes cast for him, and at the end thereof set down in a column provided for that purpose the whole number of votes he received. The judges and clerk shall sign a certificate to said tally list, setting forth the whole number of votes cast for each person or trustee, designating the term, and they shall verify the same as being correct, to the best of their knowledge, before an officer authorized to administer oaths. No informality in such certificate shall vitiate the election, if the number of votes received for each person can reasonably be ascertained from said tally list. Said books and tally lists shall be returned to the board of trustees of the district, who shall canvass the vote and cause the clerk of the district to issue a certificate of election to the person or persons elected, designating their term, a copy of which must be forwarded to the county superintendent of schools. School trustees are hereby authorized to administer oaths to judges of election.

History: Ap. p. Sec. 1780, Pol. C. 1895; amd. Sec. 11, p. 142, L. 1897; amd. Sec. 860, Rev. C. 1907; amd. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 996, R. C. M. 1921.

# Requirements Mandatory

A school bond election was void where the requirements of this section were not complied with. Hehn v. Olson, — M —, 358 P 2d 431, 433.

#### References

State ex rel. Wildin v. Eickoff, 84 M 539, 547, 276 P 954.

# Collateral References

Elections 212, 241, 248, 265. 29 C.J.S. Elections §§ 197, 230, 240.

75-1613. (997) Term of office—vacancy—oath of trustees. Trustees elected shall take office immediately after qualifying, and shall hold office for the term of three years except as elsewhere expressly provided herein, and until their successors are elected or appointed and qualified.

The clerk of the district shall, at the time of issuing certificate of election to a person elected as trustee, deliver to such person a blank oath of office. Every trustee shall file his oath of office with the county superintendent of schools within fifteen days of the receipt of the certificate of election and blank oath of office from the clerk. Any trustee failing to qualify as herein provided shall forfeit all rights to his office, and the county superintendent of schools shall appoint to fill the vacancy caused thereby.

History: Ap. p. Sec. 1782, Pol. C. 1895; amd. Sec. 13, p. 143, L. 1897; Secs. 862 and 1019, Rev. C. 1907; amd. Sec. 502, Ch. 76, L. 1913; amd. Sec. 11, Ch. 196, L. 1919; re-en. Sec. 997, R. C. M. 1921.

223 P 903; State ex rel. Kuhl v. Kaiser, 95 M 550, 553, 27 P 2d 1113.

#### Defenences

State ex rel. Bray v. Long, 21 M 26, 29, 52 P 645; Jersey v. Peacock, 70 M 46, 47,

# Collateral References

Schools and School Districts \$\infty\$ 53(2, 4). 78 C.J.S. Schools and School Districts \$\xi\$ 111, 114.

75-1614. (998) Vacancy in school board. A vacancy in the office shall be filled by appointment by the county superintendent of schools; provided, that in districts of the first and second class, such appointment shall be subject to confirmation by a majority of the remaining members of said board, if those remaining constitute a majority of the total number of the board. The trustee so appointed shall hold office until the next annual election, at which election there shall be elected a school trustee for the unexpired term. When any vacancy occurs in the office of trustee of any school district by death, resignation, failure to elect at the proper time, removal from the district, or other cause, the fact of such vacancy shall be immediately certified to the county superintendent by the clerk of the school district, and the county superintendent shall immediately appoint in writing, some competent person, who shall qualify and serve until the next annual school election. The county superintendent shall at the time notify the clerk of the school district of every such appointment; provided, that absence from the school district for sixty consecutive days, or failure to attend three consecutive meetings of the board of trustees without good excuse, shall constitute a vacancy in the office of trustee.

History: Ap. p. Sec. 1782, Pol. C. 1895; amd. Sec. 13, p. 143, L. 1897; Secs. 862 and 1019, Rev. C. 1907; amd. Sec. 502, Ch. 76, L. 1913; amd. Sec. 11, Ch. 196, L. 1919; re-en. Sec. 998, R. C. M. 1921.

# Term of Appointees

Under this section, a school trustee appointed to fill a vacancy shall hold office only until the next annual school election at which a trustee shall be elected for the unexpired term. Two of three trus-

tees of a district for the third class elected for three-year terms expiring in 1934 and 1935, resigned. The board of trustees declined to call an election in the spring of 1933 to choose successors to the appointees, on the theory that they held over for the respective terms; however, by the use of stickers, successors were elected at such election. The district court properly granted a writ of mandate compelling the board of trustees to issue certificates of election to the persons elected

to succeed the appointees. State ex rel. Kuhl v. Kaiser, 95 M 550, 553, 555, 27 P 2d 1113.

Section 75-1617, apparently in conflict with this section, was intended to adjust the terms of school trustees so that the terms of a majority thereof should not expire at the same time, after which it has no further application to such district.

State ex rel. Kuhl v. Kaiser, 95 M 550, 553, 555, 27 P 2d 1113.

#### Collateral References

Elections 141-145; Schools and School Districts 53(4).

29 C.J.S. Elections §§ 91, 106, 107, 109, 110, 135, 137; 78 C.J.S. Schools and School Districts § 117.

75-1615. (999) Trustees—how removed. Any school trustee may be removed from office by a court of competent jurisdiction by law for removal of elective civil officers; provided, however, that upon charges being preferred and good cause shown, the board of county commissioners may suspend a trustee until such time as such charges can be heard in the court having jurisdiction thereof.

History: En. Sec. 1982, Pol. C. 1895; re-en. Sec. 1021, Rev. C. 1907; re-en. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 999, R. C. M. 1921.

# Collateral References

Schools and School Districts 53(5). 78 C.J.S. Schools and School Districts 116.

# References

State ex rel. Galbreath v. District Court, 108 M 425, 426, 91 P 2d 424.

75-1616. (1000) Vacancy in office of clerk. Should the office of the clerk of the school district become vacant, the board of school trustees shall immediately fill such vacancy by appointment, and the chairman of the board of school trustees shall immediately notify the county superintendent of such appointment.

History: En. Sec. 1981, Pol. C. 1895; re-en. Sec. 1020, Rev. C. 1907; re-en. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 1000, R. C. M. 1921.

# Collateral References

Schools and School Districts \$3(1).
78 C.J.S. Schools and School Districts \$117.

#### References

O'Brien v. School District No. 1, 68 M 432, 435, 219 P 1113.

75-1617. (1001) Rearrangement of terms to prevent the election of a majority of the trustees. When at any annual school election the terms of a majority of the trustees regularly expire in districts of the first class, three trustees, in districts of the second class, two trustees, in districts of the third class, one trustee, shall be elected for three years, and the remaining trustee or trustees whose terms expire shall hold over for one or two years as may be necessary to prevent the terms of a majority of the board of trustees expiring in any one year; provided, that it shall be determined by lot what trustee shall hold over, and for what term.

History: En. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 1001, R. C. M. 1921.

# Ballot for Transitional Election

In a school district of the third class the members of the board of trustees had been holding over for many years for failure to hold elections to choose their successors. An election was called and the board instead of pursuing the method of procedure under such circumstances prescribed by this section, i.e., selecting by lot one of its members to hold over for one year and one for two years and providing for the election of the third for the term of three years, furnished ballots providing for the election of three trustees for terms of one, two and three years respectively. Since there was only one trustee to be elected, the ballots furnished were so misleading as to render the election void. Jersey v. Peacock, 70 M

46, 48, 223 P 903, distinguished in 95 M 550, 553, 27 P 2d 1113.

# Conflicting Provisions

This section, apparently in conflict with section 75-1614, was intended to adjust the

terms of school trustees so that the terms of a majority thereof should not expire at the same time, after which it has no further application to such district. State ex rel. Kuhl v. Kaiser, 95 M 550, 553, 27 P 2d 1113.

75-1618. (1002) Qualifications of electors. Every citizen of the United States of the age of twenty-one years or over who has resided in the state of Montana for one year, and thirty days in the school district next preceding the election, may vote thereat.

History: En. Sec. 1777, Pol. C. 1895; amd. Sec. 8, p. 138, L. 1897; re-en. Sec. 857, Rev. C. 1907; amd. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 1002, R. C. M. 1921; amd. Sec. 1, Ch. 83, L. 1939; amd. Sec. 1, Ch. 65, L. 1941.

#### References

State ex rel. Wildin v. Eickoff, 84 M 539, 547, 276 P 954; Buckhouse v. Joint School District No. 28, 85 M 141, 146, 277 P 961.

#### Collateral References

Elections 59, 66, 72, 83. 29 C.J.S. Elections §§ 16, 17, 20, 29.

75-1619. (1003) Challenges—oath of voters. Any person offering to vote may be challenged by any elector of the district, and the judges must thereupon administer to the person challenged an oath or affirmation in substance as follows:

You do solemnly swear (or affirm), that you are a citizen of the United States; that you are twenty-one years of age; and that you have resided in the State one year, and in this school district thirty days next preceding this election, and that you have not voted this day, so help you God.

If he takes this oath or affirmation, his vote must be received; otherwise rejected. Any person who shall swear falsely before any such judge of election shall be guilty of perjury, and shall be punished accordingly.

History: Ap. p. Sec. 1779, Pol. C. 1895; amd. Sec. 10, p. 141, L. 1897; re-en. Sec. 859, Rev. C. 1907; amd. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 1003, R. C. M. 1921; amd. Sec. 2, Ch. 83, L. 1939; amd. Sec. 2, Ch. 65, L. 1941.

#### References

State ex rel. Bray v. Long, 21 M 26, 33, 52 P 645; State ex rel. Wildin v. Eickoff, 84 M 539, 547, 276 P 954.

# Collateral References

Elections 223. 29 C.J.S. Elections § 209.

75-1620. (1004) Expenses of election. All the expenses necessarily incurred in the matter of holding elections for school trustees shall be paid out of the school funds of the district. Judges of election of districts of the first and second class shall receive not to exceed three dollars per day each for all services connected with the election.

History: Ap. p. Sec. 14, p. 145, L. 1897; re-en. Sec. 866, Rev. C. 1907; amd. Sec. 502, Ch. 76, L. 1913; re-en. Sec. 1004, R. C. M. 1921.

# Collateral References

Schools and School Districts \$\sim 87.
78 C.J.S. Schools and School Districts \$318.

75-1621. (1005) Organization. The school trustees shall meet annually the third Saturday in April and organize by choosing one of their number chairman, and a competent person, not a member of the board, as clerk. The chairman shall preside at all the meetings of the board, and shall perform such duties as usually pertain to such officer, and in accordance with the customary rules of order.

History: Ap. p. Sec. 1793, Pol. C. 1895; Rev. C. 1907; amd. Sec. 504, Ch. 76, L. amd. Sec. 4, p. 59, L. 1899; re-en. Sec. 871, 1913; re-en. Sec. 1005, R. C. M. 1921.

#### References

Kenyon-Noble Co. v. School District No. 4, 40 M 123, 130, 105 P 551; School District No. 2 v. Richards, 62 M 141, 148, 205 P 206; O'Brien v. School District No. 1, 68

M 432, 435, 219 P 1113; State v. McGraw, 74 M 152, 157, 240 P 812; Mintener Lumber Co. v. School District No. 56, 84 M 461, 469, 277 P 9.

75-1622. (1006) Meetings. The board shall hold, in districts of the first class, at least one and not more than five meetings each month for the transaction of its business; and in all districts at least four meetings each year shall be held, to wit: On the third Saturdays of April, July, October and January, at such places and hours as shall be fixed by the board. A special meeting of the board may be held upon the call of the chairman or any two members of the board; at least forty-eight hours' written notice shall be given to each member of the board of any special meetings, and no business transacted by the board shall be valid unless transacted at a regular or special meeting thereof.

History: Ap. p. Sec. 1794, Pol. C. 1895; amd. Sec. 5, p. 59, L. 1899; re-en. Sec. 872, Rev. C. 1907; amd. Sec. 505, Ch. 76, L. 1913; re-en. Sec. 1006, R. C. M. 1921.

# Business Transacted Other than at Meeting

The notice of dismissal which must be given a teacher entitled to the benefits of the tenure act, is one based upon action by a majority of the board of trustees taken at a meeting thereof; hence, where two of the three members of the board decided in casual conversations had at their homes to dispense with the services of the teacher and notified her to that effect in writing, the notice was not the legal notice required and was insufficient to effect her dismissal. To give validity to the business of the board it must be

transacted at a regular or special meeting, and the trustees must then act as a board. Day v. School District No. 21, 98 M 207, 214, 215, 38 P 2d 595.

#### References

O'Brien v. School District No. 1, 68 M 432, 434, 219 P 1113; Mintener Lumber Co. v. School District No. 56, 84 M 461, 466, 277 P 9.

#### Collateral References

Schools and School Districts 57. 78 C.J.S. Schools and School Districts \$123.

Necessity, sufficiency, and effect of minutes or record of meeting of school board. 12 ALR 235.

**75-1623.** (1007) **Quorum.** Except when otherwise authorized by law every school district is under the control of a board of school trustees, consisting of three members, a majority of which constitutes a quorum for the transaction of business.

History: En. Sec. 506, Ch. 76, L. 1913; re-en. Sec. 1007, R. C. M. 1921.

# References

Campana v. Calderhead, 17 M 548, 551, 44 P 83; State ex rel. Hoagland v. School District No. 13, 116 M 294, 297, 151 P 2d 168.

75-1624. (1008) Power over property. The board of trustees of each school district shall have custody of all school property belonging to the district, and shall have power in the name of the district, or in their own names as trustees of the district, to convey by deed all the interest of their district in or to any schoolhouse or lot directed to be sold as hereinafter provided, and all conveyances of real estate made to the district or to the trustees thereof shall be made to the board of trustees of the district and to their successors in office; said board, in the name of the district, shall have power to transact all business necessary for maintaining schools and protecting the rights of the district; the trustees of the district shall have the

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power to lease any property belonging to the district which is not being used for school purposes.

Whenever, after the passage and approval of this act, a conditional deed has been issued to a school district for land or whenever land has been used at will or sufferance for a school site and there has been built upon such land a schoolhouse and other improvements, and said building and improvements cease to be used for the maintenance of a school in accordance with the provisions of sections 75-1631 and 75-1632, said board of trustees must be notified in writing by the owner or claimant of the land which has been so deeded or used by will or sufferance for a school site that he intends to repossess the land and the school trustees shall, within a period of not exceeding one (1) year, remove the building and improvements placed thereon or they shall be deemed thereafter to have forfeited any further right to such property. Provided further that before the landowner or claimant to said land shall have the right to give the notice of removal aforesaid, the intent to abandon said land by the school district must have been expressed by the duly qualified electors in the school district in accordance with the provisions of subdivision eight (8) of section 75-1632.

History: En. Sec. 1801, Pol. C. 1895; re-en. Sec. 881, Rev. C. 1907; re-en. Sec. 507, Ch. 76, L. 1913; re-en. Sec. 1008, R. C. M. 1921; amd. Sec. 1, Ch. 186, L. 1937; amd. Sec. 1, Ch. 206, L. 1939.

#### Collateral References

Schools and School Districts \$239.

Title to buildings when school lands revert for nonuse for school purposes. 28 ALR 2d 564.

Use of public school premises for religious purposes during nonschool time. 79 ALR 2d 1148.

Attendance of elementary school pupil at school outside of state. When the board of trustees of any school district shall deem it for the best interest of any pupil or pupils residing in such school district to attend an elementary school in some school district in a county situated in another state, and which school district adjoins the school district in which such pupil or pupils reside, and written consent thereto has been given by the county superintendent of schools of the county in which such pupil or pupils reside in accordance with the provisions of section 75-1630, as amended, such board may expend any moneys belonging to their district for the purpose of either paying for the transportation of such pupil or pupils from their homes to the school in the district in the other state which is to be attended, or for board, rent or tuition for such pupil or pupils while actually attending such school, in the same manner and to the same extent as such money might be expended for transportation, board, rent or tuition of such pupil or pupils if permission were given for attending an elementary school in another school district in the county in which such pupil or pupils reside in accordance with the provisions of section 75-1630,

History: En. Sec. 1, Ch. 217, L. 1939; amd. Sec. 1, Ch. 207, L. 1951.

# Collateral References

Schools and School Districts 154, 159½.

79 C.J.S. Schools and School Districts \$\\$451, 475.

75-1626. (1010.1) Dissatisfied person may appeal. If any person shall be dissatisfied with any finding or determination of either the board of trustees or county superintendent of schools under the provisions of this chapter relating to transportation, rent, tuition or board, such person may appeal from such finding or determination by written petition to the state superintendent of public instruction.

History: En. Sec. 2, Ch. 77, L. 1927; amd. Sec. 2, Ch. 102, L. 1929.

# Constitutionality

Prior to amendment by Ch. 102, Laws 1929, this section was not open to the objection that under section 11, Article XI of the Constitution, the legislature is limited to prescribing powers and duties for such board to be exercised in connection with the state educational institutions and

therefore was without authority to clothe it with jurisdiction to pass on appeals relating to matters connected with the common schools. State ex rel. Stephens v. Keaster, 82 M 126, 129 et seq., 266 P 387.

This section is not ineffective for failure to prescribe procedural rules for taking the appeal. State ex rel. Stephens v. Keaster, 82 M 126, 129 et seq., 266 P 387.

# 75-1627. (1010.2) Repealed—Chapter 50, Laws of 1947.

75-1628. (1011) Night schools. The trustees shall have power to organize and maintain outside of the regular school hours special sessions of the public schools, whenever, in their judgment, such sessions are necessary. They shall determine what subjects shall be taught, and shall make all necessary rules and regulations for such sessions, including the terms of admission of pupils. Such schools shall be free to all eligible pupils of the district, and the expense of maintenance shall be paid out of the general school funds of the district.

History: En. Sec. 507, Ch. 76, L. 1913; re-en. Sec. 1011, R. C. M. 1921.

# Collateral References

Schools and School Districts 11. 78 C.J.S. Schools and School Districts 13.

75-1629. (1012) Issuance of warrants against anticipated revenues. The board of trustees of any school district, shall have authority to issue warrants in anticipation of the collection of school moneys for which levies have been made, but which have not been collected, for the payment of current expenses of the schools of said district;

Provided, however, that the total of all such warrants issued during any fiscal year shall not exceed an amount aggregating the following: The cash on hand at the beginning of such fiscal year, ninety (90) per cent of the amount of all taxes levied by such school district for the purpose of providing revenues for current expenses for such fiscal year, plus all revenues actually received from all other sources for use during such fiscal year, and all warrants heretofore issued within the limits herein prescribed are hereby declared to be the valid and subsisting obligations of the school districts issuing the same;

Provided further that until receipt of such revenues other than revenues from tax levies, the issuance of warrants shall be based upon the amounts of such revenues received during the previous fiscal year.

History: New section inserted by code commissioner 1921; amd. Sec. 1, Ch. 162, L. 1933.

# Cash Basis Payments

Though under section 75-1516 and this section, school trustees may issue warrants

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in anticipation of school moneys from uncollected taxes to the extent of the sum levied, the legislative assembly did not extend the privilege of going on the payas-you-go plan to school districts, as it did to cities and towns (11-1301, 11-1302). Farbo v. School District No. 1, 95 M 531, 534 et seq., 28 P 2d 455.

# Collateral References

Schools and School Districts 95(1). 79 C.J.S. Schools and School Districts 346.

75-1630. (1013) Transfer of funds. Children may attend public elementary schools in districts in the county outside of the district in which they reside, or in a district in an adjoining county, or in a district in a county in another state when the district in such other state adjoins the district in which they reside, or is situated in a county in such other state, which county adjoins the state of Montana, when written permission is secured from the board of trustees of the district in which they are to attend school and when written permission has been given by the county superintendent of schools of the county in which the children reside. Permission must be granted for such attendance in another district within or without the county of such children's residence when the following conditions exist:

- 1. When a child lives less than three (3) miles from a public elementary school in another district or county and three (3) or more miles from a public elementary school in the district or county of his own residence.
- 2. When a child resides more than three (3) miles distance from a public elementary school within his own district or county and no transportation is furnished by the home district or county to such school.
- 3. When regular bus transportation is furnished by a public elementary school in another district or county and his own district or county does not furnish transportation.

Such distances mentioned above shall be measured from the point where the private family dwelling house is situated to the schoolhouse by the shortest traveled route.

- 4. When a family has children who must attend high school outside of its own district or county and such family also has elementary school children who can more conveniently attend the elementary grades in the same district where the high school is located, provided such elementary children live more than three (3) miles from the home school or that a parent must move to town to provide high school education for his children.
- 5. When the county superintendent of schools of the county where the child resides, for any other reason than stated above shall approve the attendance of any child in a public elementary school in another county. In approving such attendance in another district or county, the county superintendent shall take in consideration such items as distance to school, road conditions, trading center of parents, opportunity to live with relatives, dormitory facilities, living conditions, transportation and type of educational program.

In the event that the residence, for determining tuition obligations, of such child is in dispute, then the rules for determining residence as outlined in section 83-303, shall be used by the county superintendent of the county of the child's residence, or in case the dispute is between districts of two

counties by the county superintendents of such counties, to finally determine the residence of such child.

When approval of attendance in another district within or without the county has been granted, the district in which such child resides shall pay to the school district where such child attends, an amount based on the following tuition rates: in the case of attendance at an elementary school with an average number belonging up to one hundred (100), the tuition to be paid shall be two hundred twenty-five dollars (\$225.00); where the school attended has an average number belonging between one hundred one (101) and three hundred (300), the tuition shall be two hundred dollars (\$200.00); and where the school attended has an average number belonging over three hundred (300), the tuition rate shall be one hundred seventy-five dollars (\$175.00) per pupil.

It is hereby made the duty of the board of school budget supervisors in approving the budgets, to include therein an item to care for the above tuition, if this has not already been done by the board of trustees in preparing the budget for the district.

Applications for permission to attend a school outside the district or county shall be made to the county superintendent before July 1, previous to the year of attendance, excepting in those cases where circumstances prevent such application. These applications are to be approved or disapproved, except as otherwise provided by law, by the county superintendent, and by the trustees of the district the pupil wishes to attend.

At the close of the school term of the year in which such pupil attends this school outside the district, the clerk of such district shall transmit to the county superintendent the names of pupils from other districts attending his school, together with the number of days attended. This information in turn shall be transmitted by the county superintendent to the districts affected and such district shall reimburse the school attended for all pupils of its district; provided such pupil has attended at least forty (40) days. This amount of reimbursement shall be made an item of the budget for the coming year and reimbursement shall be made to the district of attendance out of the first funds available to the budget; provided, however, that the trustees of the district receiving pupils from another district may waive any or all tuition; provided, further, that the amount of this tuition shall not reduce the foundation program of the school paying it, but shall be an additional item added to it to be raised without a vote of the people; and provided further, that the district receiving the tuition may apply it against the needs of the budget after the regular district, county and state aid have been received.

In the case of a district which does not operate a school, the amount of this tuition can be raised without a vote of the people if the five (5) mill district levy and other local revenue is insufficient to raise the amount needed.

It shall be the responsibility of the superintendent of schools and the board of trustees of the public elementary school receiving the pupils and county superintendent of schools of the county of the pupils' residence to determine and agree upon eligibility of pupils transferring under the pro-

visions of this act; provided, that an appeal may be taken to the state superintendent of public instruction.

Whenever elementary pupils residing in Montana are approved for attendance in an elementary school in an adjoining state; and whenever elementary pupils in an adjoining state are approved for attendance in an elementary school in Montana, the above schedule of tuition payments may be waived and payments arrived at on a reciprocal basis with the state involved. The state superintendent of public instruction is hereby authorized to negotiate with the state superintendent of public instruction of each state involved in arriving at tuition payments, which may either be on a per pupil basis of a flat amount or on an actual cost basis.

History: En. Sec. 507, Ch. 76, L. 1913; amd. Sec. 12, Ch. 196, L. 1919; re-en. Sec. 1013, R. C. M. 1921; amd. Sec. 1, Ch. 109, L. 1929; amd. Sec. 2, Ch. 217, L. 1939; amd. Sec. 1, Ch. 203, L. 1943; amd. Sec. 2, Ch. 207, L. 1951; amd. Sec. 1, Ch. 21, L. 1953; amd. Sec. 1, Ch. 99, L. 1959; amd. Sec. 1, Ch. 228, L. 1961.

# Collateral References

Schools and School Districts 19(2),

78 C.J.S. Schools and School Districts § 21; 79 C.J.S. Schools and School Districts § 451.

75-1631. (1014) Call of special election. The board of trustees shall have power to call a special election for the purpose of bonding the district for the erection and furnishing buildings and purchase of school sites, and for permission to sell school property; provided, that in districts of the first and second classes boards of trustees shall have power to change or select school sites.

History: En. Sec. 507, Ch. 76, L. 1913; re-en. Sec. 1014, R. C. M. 1921.

# Repealed in Part

The part of this section authorizing trustees of first and second class school districts to change or select school sites without the sanction of the electors of the district, was impliedly repealed by Ch. 122, Laws 1923, amendatory of section 75-1632, by providing generally, irrespective of the class of the district, that school boards shall not build or remove school-houses, nor purchase, sell or locate school sites unless directed so to do by a ma-

jority of the electors of the district. Nichols v. School District No. 3, 87 M 181, 184 et seq., 287 P 624.

## References

State ex rel. Fisher v. School District No. 1, 97 M 358, 370, 34 P 2d 522.

# Collateral References

Schools and School Districts 68, 69, 97(4).

78 C.J.S. Schools and School Districts §§ 247, 250; 79 C.J.S. Schools and School Districts § 366.

75-1632. (1015) Duties of trustees. Every school board unless otherwise specially provided by law shall have power and it shall be its duty:

- 1. To prescribe and enforce rules not inconsistent with law, or those prescribed by the superintendent of public instruction for their own government of schools under their supervision.
- 2. To employ or discharge teachers, mechanics or laborers, and to fix and order paid their wages; provided, that no teacher shall be employed except under resolution agreed to by a majority of the board of trustees at a special or regular meeting; nor unless such teacher be the holder of a legal teacher's certificate in full force and effect. All contracts of employment of teachers, authorized by proper resolution of a board of trustees, shall be in writing and executed in duplicate by the chairman and clerk of the board, for the district and by the teacher.
  - 3. To determine the rate of tuition of nonresident pupils.

- 4. To fix the compensation of the clerk.
- 5. To enforce the rules and regulations of the superintendent of public instruction for the government of schools, pupils, and teachers and to enforce the course of study.
- 6. To provide for school furniture and for everything needed in the schoolhouse or for the use of the school board.
- 7. To repair and insure schoolhouses and to rent, lease and let to such persons or entities as the board may deem proper, the grade school halls, gymnasium and buildings and part thereof for such time and rental as the board may designate. All rentals shall be paid to the county treasurer for the credit of the school district.
- 8. To purchase, acquire, sell and dispose of plots or parcels of land to be used as sites for schoolhouses, school dormitories and other school buildings, and for other purposes in connection with the schools in the district; to build, purchase or otherwise acquire schoolhouses, school dormitories and other buildings necessary in the operation of schools of the district, and to sell and dispose of the same; provided, that they shall not build or remove schoolhouses or dormitories, nor purchase, sell or locate school sites unless directed so to do by a majority of the electors of the district voting at an election held in the district for that purpose, and such election shall be conducted and votes can assed in the same manner as at the annual election of school officers, and notice thereof shall be given by the clerk by posting three (3) notices in three (3) public places in the district at least ten (10) days prior to such election, which notices shall specify the time, place, and purpose of such election. Provided, further, that this subdivision shall not be so construed as to prevent the board of trustees from purchasing one (1) or more options for a school site.
- 9. To hold in trust for their district all real or personal property for the benefit of the school thereof.
- 10. To suspend or expel pupils from school who refuse to obey the rules thereof, and to exclude from school, children under six (6) years of age where the interest of the school requires such exclusion.
- 11. To provide clothing and medical aid for indigent children when it shall be made to appear that such aid is needed; and when deemed advisable to employ a physician or registered nurse to make inspection into the sanitary conditions of the school and the general health conditions of each pupil, and to make a full, detailed report to the board of trustees. The clerk of the district shall furnish immediately to each parent or guardian a copy of such portion of the above mentioned report as pertains to his child or ward.
- 12. To require pupils to be furnished with suitable books as a condition of membership in school.
- 13. To exclude from school and school libraries all books, tracts, papers and other publications of immoral and pernicious nature.
  - 14. To require teachers to conform to the law.
- 15. To make an annual report, as required by law, to the county superintendent on or before the first day of August in each year, in the manner and form and on the blanks prescribed and furnished by the superintendent of public instruction.

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- 16. To make a report directly to the superintendent of public instruction whenever instructed by him to do so.
- 17. To determine what branches, if any, in addition to those required by law, shall be taught in any school in the district, subject to the approval of the county superintendent in districts of the third class.
- 18. To visit every school in their district at least once in each term, and to examine carefully into its management, conditions, and needs. This clause applies to each of the trustees.
- 19. To provide separate privies or outhouses for the use of the sexes at all schoolhouses, where the same do not exist, and to see that the same are kept in good repair, and in a clean condition. Such privies or outhouses must be located and built in such manner as to secure privacy. In all cases where there is no fence dividing the play yards of the sexes, the privies or outhouses herein named shall be separate and distinct buildings, and situated at least twenty (20) feet apart, and to require that all janitors use due care in keeping all toilets in good repair and in clean condition and free from obscenity; provided, that any trustee or trustees, janitor, or janitors, failing to comply with the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars (\$100.00), or imprisoned in the county jail not exceeding ninety (90) days, or both such fine and imprisonment in the discretion of the court.
- 20. To allow pupils residing in other districts to attend school in the district of which they have charge, if in their judgment there is sufficient room.
- 21. To procure, by purchase or donation, and to cause to be displayed daily in suitable weather, an American flag, with accompanying necessary fixtures, for each and every schoolhouse in their respective districts. Said flags shall be of dimensions not less than four (4) by six (6) feet, and shall be made from durable material. The school trustees are hereby authorized and empowered to use such portion of the school funds as remain in their hands, and which is not otherwise appropriated, for the purchase and erection of fixtures.
- 22. To close school at their discretion during the annual session of the state teachers' association, and to allow teachers to attend the same without loss of salary.
- 23. To provide foods, cooks, janitor services and equipment for school lunches when deemed advisable by the board. Governed by its own judgment, the board may impose a money charge, produce or services from the pupils desiring to and participating in the program of school lunches.
- 24. To provide for a system of bookkeeping and annual auditing of extracurricular funds; such bookkeeping system to be recommended by the state examiner and such audit to be made by a qualified accountant or by the state examiner if so requested. If the audit is made by the state examiner, then, there shall upon completion of the audit, be paid a fee of sixty dollars (\$60.00) per day per man, into the state treasury, and the state treasurer shall accredit such payment to the special examiner's fund. A certified copy of such audit shall be filed with the county superintendent

of schools, and notice of such filing and the availability of the audit to public inspection, shall be published by said superintendent in the next publication of a newspaper published within the district, or, in case there be no paper published within the district, in a newspaper published within the county, if any, and if none within the county then in the nearest newspaper published in an adjoining county and payment of such publication and audit shall be made from the extracurricular funds or from school district funds, as the board of trustees may decide.

History: Earlier acts governing the duties of trustees were the following: Sec. 27, p. 625, Cod. Stat. 1871; re-en. Sec. 26, p. 126, L. 1874; re-en. Sec. 1113, 5th Div. Rev. Stat. 1879; amd. Sec. 6, p. 55, L. 1883; amd. Sec. 1885, 5th Div. Comp. Stat. 1887; amd. Sec. 1797, Pol. C. 1895; amd. Sec. 5, p. 130, L. 1897; re-en. Sec. 875, Rev. C. 1907. The above section was enacted as Sec. 508, Ch. 76, L. 1913; Subds. 1-10 were amended by Sec. 1, Ch. 61, L. 1917; Subd. 11 amd. by Sec. 1, Ch. 61, L. 1917, and Sec. 13, Ch. 196, L. 1919; Subds. 12-13-14 re-en. Sec. 1, Ch. 61, L. 1917; Subd. 15 was amd. by Sec. 1, Ch. 61, L. 1917, and by Sec. 2, Ch. 81, L. 1917; Subds. 16-17-18 re-en. Sec. 1, Ch. 61, L. 1917; Subds. 19-20-21-22 re-en. Sec. 1, Ch. 61, L. 1917; re-en. Sec. 1015, R. C. M. 1921; amd. Sec. 1, Ch. 122, L. 1923; amd. Sec. 1, Ch. 122, L. 1931; amd. Sec. 1, Ch. 165, L. 1937; amd. Sec. 1, Ch. 103, L. 1943; amd. Sec. 3, Ch. 207, L. 1951; amd. Sec. 1, Ch. 233, L. 1953; amd. Sec. 1, Ch. 228, L. 1955; amd. Sec. 1, Ch. 168, L. 1959; amd. Sec. 1, Ch. 105, L. 1961.

# Cross-Reference

Playgrounds, authority of schools to establish, secs. 62-212 to 62-215.

#### Subd. 1, Textbook Selection

Where the legislature has failed to make provision for a uniform series of textbooks throughout the state, or to devolve the duty of doing so upon some officer or board, the trustees of a school district, under the general powers vested in them, and particularly the power of the board "to prescribe and enforce rules not inconsistent with law, or those prescribed by the superintendent of public instruction, for their own government of schools under their supervision," could prescribe what books should be used, in the schools of the district. Campana v. Calderhead, 17 M 548, 552, 44 P 83.

#### Subd. 2, Dismissal of Superintendent

A district school superintendent appointed under section 75-4140 by the board of school trustees, occupies a different position from that of a teacher employed under this section; he is the executive officer of the board and as such a public officer, and while there is no statutory

provision requiring a hearing before removal, where it is not had, his dismissal is void as made in excess of jurisdiction. State ex rel. Howard v. Ireland, 114 M 488, 495, 138 P 2d 569.

# Subd. 2, Mandamus

Where nonunion schoolteachers were offered a salary increase only if they signed a contract which contained a union security clause, they could not sue in contract for the increased salary because they had no written contract with the district, but they were entitled to bring a mandamus action against the school district to obtain a judgment declaring that they could not be discriminated against, compelling the district to enter into contracts with them, and ruling that the union security provision was void. Benson v. School District No. 1, 136 M 77, 344 P 2d 117.

#### Subd. 2, Tenure Law

A school board had no power to allow compensation to a teacher for the full period of twelve months, during two and a half months of which time no school work was required and she was left free to engage in other pursuits; a donation of public funds under the pretext of compensation being unlawful. Finley v. School District No. 1, 51 M 411, 414, 153 P 1010, distinguished in 95 M 498, 502, 27 P 2d 540.

Where a teacher had taught school in the same district for three consecutive years (1929-1931) under an informal contract, although the statute provides that such contracts shall be in writing, the board of trustees, by accepting the benefits of the teacher's services and in issuing warrants to her in payment thereof, will be held to have ratified the contract; ratification thereof was equivalent to full compliance with the necessary formalities, and the contract thereupon must be considered as valid from its inception. Day v. School District No. 21, 98 M 207, 211, 38 P 2d 595.

A school board may refuse to employ or re-employ a teacher with or without cause and need not give any reason for its action, but after three years of service by teacher the board must take some affirmative action before May 1, and, if not;

re-employment becomes automatic for another year. Eastman v. School District No. 1, 120 M 63, 180 P 2d 472, 479.

No person can be employed to teach in public schools without a contract with board of school trustees and so-called Teachers' Tenure Act does not eliminate necessity of having a contract; the only effect of tenure act being to renew teacher's existing contract for another year by operation of law after election for third consecutive year unless notice specified in statute is given. Eastman v. School District No. 1, 120 M 63, 180 P 2d 472, 479.

# Subd. 2, Transfer of Teachers

While a regularly employed teacher may be discharged for a good and sufficient cause yet the board has no power to transfer a teacher from a higher to a lower grade. Assigning a teacher to a lower grade is a "removal," just as much as a dismissal would be. Smith v. School District No. 18, 115 M 102, 115, 139 P 2d 518.

# Subd. 2, Union Security Contracts

School trustees have no authority or power to discriminate between teachers as to the amount of salary because of their membership or lack of membership in a labor union; therefore, a union security clause in a contract offered schoolteachers was void. Benson v. School District No. 1, 136 M 77, 344 P 2d 117.

# Subd. 8, Schoolhouses

The term "schoolhouse" as used in a provision similar to subdivision 8 of the above section, found in the Compiled Statutes of 1887 (Comp. Stat. 1887, div. 5, sec. 1885), did not mean simply the house, but referred to the school plant, including the general equipment, pupils and teachers, so that the board had no authority to remove the school properties and equipment to another district without being directed to do so by a vote of the people. State ex rel. Jay v. Marshall, 13 M 136, 139, 32 P 648.

Mandamus is the proper remedy to require the trustees of a school district to determine the location of a site for a schoolhouse, where they arbitrarily remove a school to a site selected by themselves, without consulting the electors; a resident and taxpayer of the school district is a party beneficially interested, and entitled in such case to make the application. State ex rel. Bean v. Lyons, 37 M 354, 365, 96 P 922.

The provision of section 1719 of the Political Code of 1895, in regard to the removal of schoolhouse and the purchase or sale of school lots when directed by vote of the district, is not only a grant

of power to school boards, but also a limitation upon their power, both as to its extent and as to the mode of its exercise, so that they cannot do any of the acts referred to without first obtaining the consent of the electors. State ex rel. Bean v. Lyons, 37 M 354, 365, 96 P 922.

Under subdivision 8 of this section, the

Under subdivision 8 of this section, the selection and purchase of a site for a school building in districts of the first and second classes is not entrusted to the electors of the districts but lodged in the trustees under directions of the electors. Nichols v. School District No. 3, 87 M 181, 184, 287 P 624.

# Subd. 10, Admission of Pupils

A reasonable interpretation of constitutional and statutory provisions specifying that school shall be open to children between the ages of 6 and 21 years, read again in connection with other provisions requiring a thorough education, is that a child must be allowed to enter the first grade sometime during his seventh year after reaching his sixth birthday. Each local school district has the power to admit children into the first grade who are not yet 6 years of age and each school district may establish a "cut-off" date governing entry into the first grade. State ex rel. Ronish v. School District No. 1, 136 M 453, 348 P 2d 797.

# Subd. 17, Courses of Instruction

The board having provided for athletic training under authority given it by subd. 17, a place for giving proper instruction therein whether within or outside of a building, becomes a necessary part of the school plant and a bond issue voted for the purpose of a high school gymnasium and athletic field will not be enjoined. McNair v. School District No. 1, 87 M 423, 432, 288 P 188, 69 ALR 866.

# Subd. 20, Nonresident Pupils

In the exercise of the power conferred upon school trustees by this section, to admit nonresident pupils and to fix the amount of tuition to be charged them, the board acts in a quasi-judicial capacity, and with the proper exercise of its discretion and judgment in that regard the courts will not interfere. Peterson v. School Board, 73 M 442, 445, 236 P 670.

#### References

State ex rel. Hessler v. District Court, 64 M 296, 300, 209 P 1052; O'Brien v. School District No. 1, 68 M 432, 434, 219 P 1113; Kelsey v. School District No. 25, 84 M 453, 457, 276 P 26; Mintener Lumber Co. v. School District No. 56, 84 M 461, 467, 277 P 9; Missoula Co. F. H. School v. Smith, 91 M 419, 425, 8 P 2d 800; State ex

rel. Fisher v. School District No. 1, 97 M 358, 370, 34 P 2d 522.

# Collateral References

Schools and School Districts 55, 70, 73. 78 C.J.S. Schools and School Districts §§ 119, 248, 262.

47 Am. Jur. 403, Schools, §§ 146 et seq.

Validity of regulation by school authorities as to clothes of pupils. 18 ALR 649 and 30 ALR 1216.

Regulations forbidding pupils to leave school grounds during school hours. 32 ALR 1342 and 48 ALR 659.

Right to discipline pupil for conduct away from school grounds. 41 ALR 1312. Extent of power of school district to

provide for the comfort and convenience of teachers and pupils. 52 ALR 249.

Marriage or other domestic relations as ground for exclusion of pupil from public school. 63 ALR 1164.

Power of board to appoint officer or make contract extending beyond its own terms. 70 ALR 794 and 149 ALR 336.

Matters proper for consideration is appointment of teachers. 94 ALR 1484.

Power of school or local authorities as to granting leases of school property. 111 ALR 1051.

Power of legislature or school authorities to prescribe and enforce oath of allegiance, salute to flag, or other ritual of patriotic character. 147 ALR 698.

Constitutionality, construction, and application of statutes declaring that school buildings are civic centers, or otherwise providing for use of such buildings for other than school purposes. 161 ALR 1308.

Power of public school authorities to set minimum or maximum age requirements for pupils in absence of specific statutory authority. 78 ALR 2d 1021.

75-1632.1. Trustees of school districts annually to decide by whom audit to be made. On or before the first (1st) day of January, 1954, and annually thereafter, the board of trustees of each school district coming under the provisions of this act, shall decide whether the aforesaid audit shall be made by the state examiner or by a qualified accountant to be employed by the district, and shall cause notice of its decision to be given to the state examiner.

History: En. Sec. 2, Ch. 233, L. 1953; amd. Sec. 2, Ch. 228, L. 1955.

# Compiler's Note

Although Sec. 2 of Ch. 228, Laws 1955 did not specifically amend Ch. 233, Laws 1953, yet the subject matter was almost

identical therewith. Therefore, the compiler has construed the 1955 law as superseding the 1953 law. The change made by the 1955 act was the substitution of "qualified accountant" for "certified public accountant."

Use of schoolrooms for adult education classes—tax levy. The board of trustees of any school district or of any county high school is authorized to permit the use of schoolrooms for adult education, schools or classes for all adults sixteen (16) years of age or over, and if any school district is desirous of raising money to help effect the purpose of this act, the board of county commissioners may levy a tax of not to exceed one (1) mill on the dollar of all taxable property, real and personal, within the district, in addition to all other levies for school purposes, for the support and maintenance of such adult education, schools or classes, provided such schools or classes have been first approved by the state superintendent of public instruction.

History: En. Sec. 1, Ch. 140, L. 1937; amd. Sec. 1, Ch. 188, L. 1947; amd. Sec. 1, Ch. 146, L. 1959.

#### Collateral References

Schools and School Districts 72. 78 C.J.S. Schools and School Districts § 259.

School trustees may sell property-when-notice-hearingappeals. The board of trustees of any school district, county high school, school districts maintaining a district high school or junior high school, and joint school districts, shall have the power to sell and dispose of or to ex75-1634 SCHOOLS

change any lands, building, fixtures or other property of the district which has become or is about to become abandoned, obsolete, undesirable or unsuitable for school purposes of said district; provided, however, that before making any such sale or exchange the board shall duly pass a resolution declaring such lands, buildings, fixtures or other property to be or about to become abandoned, obsolete, undesirable or unsuitable for school purposes of said district, and providing for the sale and disposition or exchange thereof; provided further that notice of the meeting at which said resolution is to be considered for final adoption and of the proposed passage of said resolution shall be given as provided by law for notices of election of trustees, at which meeting the electors of said district shall have the right to be present and to protest the passage of said resolution. If at the hearing on such resolution protests against the adoption of the same shall be made and the board of trustees shall adopt the same over such protests, the resolution shall not become effective for five (5) days after the date of its adoption, during which time any taxpayer or taxpayers may appeal to the district court by filing with the clerk of such court a verified petition, a copy of which shall theretofore have been served upon the clerk or secretary of the board of trustees. Said petition shall set forth in detail the objections of the petitioners to the adoption of such resolution or to the disposal of the property as provided for in said resolution. The service and filing of said petition shall operate to stay such resolution until final determination of the matter by the court. Upon the filing of such petition the court shall immediately fix a time for hearing the same which shall be at the earliest convenient time. At such hearing the court shall hear the matter de novo and may take such testimony as it deems necessary. Its proceedings shall be summary and informal and its determination shall be final. The moneys which result from or are attributable to the sale of any lands, buildings, fixtures, or other property of the district, which has become or is about to become abandoned, obsolete, undesirable or unsuitable for school purposes of said district shall be used by the board of trustees of said school district as it shall determine by resolution, for the purpose of: (1) retiring outstanding bonds of the school district; or (2) establishing a building fund for such school district; or (3) using such moneys as a part of the general school fund for the expenses of the school district; or (4) accomplishing any combination of purposes set out above. Notice of the meeting at which said resolution is to be considered for final adoption and of the proposed passage of said resolution shall be given as provided by law for notices of election of trustees, at which meeting the electors of said district shall have the right to be present and to protest the passage of said resolution. If at the hearing on such resolution protests against the adoption of the same shall be made and the board of trustees shall adopt the same over such protests, the resolution shall not become effective for five (5) days after the date of its adoption, during which time any taxpayer or taxpayers may appeal to the district court by filing with the clerk of such court a verified petition, a copy of which shall theretofore have been served upon the clerk or secretary of the board of trustees. Such petition shall set forth in detail the objections of the petitioners to the adoption of such resolution or to the disposal of the proceeds from the sale of the property as provided for in said resolution. The service and filing of said petition shall operate to stay such resolution until final determination of the matter by the court. Upon the filing of such petition the court shall immediately fix a time for hearing the same which shall be at the earliest convenient time. At such hearing the court shall hear the matter de novo and may take such testimony as it deems necessary. Its proceedings shall be summary and informal and its determination shall be final. The powers and authority granted by this act shall be in addition to the powers and authorities granted in sections 75-1631, 75-3101, subdivision 2 of section 75-4231, and subdivision 8 of section 75-1632.

History: En. Sec. 1, Ch. 106, L. 1939; amd. Sec. 1, Ch. 232, L. 1947.

#### Cross-Reference

Application of Montana Rules of Civil Procedure to this section, sec. 93-2711-7.

# Collateral References

Schools and School Districts ₹74. 78 C.J.S. Schools and School Districts § 263.

75-1635. (1015.1) Validation of acts of school trustees concerning building and equipping dormitories. The official acts of every board of school trustees acting as such within the state of Montana, in purchasing or building dormitories and furnishing and equipping the same prior to the passage and approval of this act, which are for the benefit of their respective school districts and are used by the pupils and teachers thereof and are necessary for such purpose, are hereby legalized and confirmed, and made effectual and valid.

History: En. Sec. 1, Ch. 123, L. 1923.

75-1636. (1015.2) Leasing of county lands for school purposes—limitation of term. Whenever any county of the state of Montana shall have acquired title to any real or personal property in any manner now provided by law and such property is suitable or useful for dormitory or gymnasium or school purposes to any public school located within the same city, town or school district where said property is situated, the board of county commissioners of said county may, upon request of the board of trustees of any such school district, lease said property to such school district for school dormitory or gymnasium purposes for such rental as the said board of county commissioners may deem adequate and for such term of years, not exceeding four years, as the board may see fit.

History: En. Sec. 1, Ch. 151, L. 1925.

#### Collateral References

Schools and School Districts \$241.

75-1637. (1016) Letting contracts and furnishing supplies, trustees not to be interested in—advertising for bids required, when. It shall be unlawful for any school trustee to have any pecuniary interest, either directly or indirectly, in the erection of any schoolhouses, or for warming, ventilating, furnishing, or repairing the same, or be in any manner connected with the furnishing of supplies for the maintenance of the schools, or to receive or to accept any compensation or reward for services rendered as trustees, except as hereinbefore provided. No board of trustees shall let any contract for building, furnishing, repairing, or other work,

for the benefit of the district, without first advertising in a newspaper published in the county for at least two (2) weeks, calling for bids to perform such work, except:

- (a) A board of trustees of third class school districts maintaining one (1) or two (2) room elementary schools, may contract, without advertising and without bids, where the amount involved is not more than four hundred dollars (\$400.00);
- (b) A board of trustees of third class school districts, other than those mentioned in subparagraph (a) may contract, without advertising and without bids, where the amount involved is not more than seven hundred and fifty dollars (\$750.00);
- (c) A board of trustees of districts of the first and second class maintaining elementary schools only, may contract without advertising and without bids where the amount involved is not more than one thousand two hundred and fifty dollars (\$1,250.00);

In all cases where advertising is required, the board shall award the contract to the lowest responsible bidder; provided, however, that the board of school trustees shall have the right to reject any and all bids.

History: Ap. p. Sec. 1802, Pol. C. 1895; re-en. Sec. 882, Rev. C. 1907; amd. Sec. 1, Ch. 32, L. 1909; amd. Sec. 509, Ch. 76, L. 1913; re-en. Sec. 1016, R. C. M. 1921; amd. Sec. 1, Ch. 44, L. 1955.

# High School Trustees

In the absence of a statute (prior to enactment of Ch. 148, Laws 1931), making it incumbent upon a board of county high school trustees to let a contract for the erection of a high school building only on competitive bids, it was not required to do so, this section relating to the duties of boards of trustees of school districts in that behalf not applying to trustees of county high schools. Missoula Co. F. H. School v. Smith, 91 M 419, 422, 8 P 2d 800.

## Taxpayer's Action

A taxpayer may maintain an action in behalf of a school district against its board of trustees to procure the cancellation of a contract for supplies alleged to have been fraudulently let by it. School District No. 2 v. Richards, 62 M 141, 205 P 206.

# Transportation Contracts

This section does not require the trustees of a school district to eall for bids for transportation of pupils. In re Transpor-

tation of School Children, 117 M 618, 620, 161 P 2d 901.

# Transportation for Trustee's Child

The provisions of this section were not violated by an agreement between the board of trustees and member thereof, upon closing a school, to furnish his children with transportation to, or board, rent and tuition at, the location of the school to which they were transferred. State ex rel. Lien v. School District No. 73, 106 M 223, 229, 76 P 2d 330.

#### References

Mintener Lumber Co. v. School District No. 56, 84 M 461, 466, 277 P 9.

# Collateral References

Schools and School Districts \$≈ 80(1, 2). 78 C.J.S. Schools and School Districts §§ 279, 285.

Relation as creditor of contracting party as constituting interest within statute against public officer being interested in contract with the public. 73 ALR 1352.

Relationship as disqualifying interest within statute making it unlawful for an officer to be interested in a public contract. 74 ALR 792.

75-1638. (1017) Liability. Any board of trustees shall be liable, as trustees, in the name of the district, for any judgment against the district for any salary due any teacher on contract, and for all debts legally contracted under the provisions of this title, and they shall pay such judgments or liabilities out of the school moneys to the credit of such district.

History: En. Sec. 1803, Pol. C. 1895; 510, Ch. 76, L. 1913; re-en. Sec. 1017, re-en. Sec. 883, Rev. C. 1907; re-en. Sec. R. C. M. 1921.

# Implied Repeal

This section was repealed by implication, in so far as it provides that judgments against a school district for salary due a teacher on a contract shall be paid by the board of trustees out of moneys to the credit of the district, by the School District Budget Act, Ch. 146, Laws 1931 (75-1701 et seq.). State ex rel. McHose v. District Court, 95 M 230, 233 et seq., 26 P 2d 345.

#### Insufficient Funds

Section 1803 of the Political Code of 1895, corresponding to the above, does not authorize the entry of a judgment against

a school district for the unpaid salary of a schoolteacher, where the district admits the claim, and the only reason that it does not pay it is that it has no funds applicable to the purpose, since until it has funds on hand with which to pay, failure or refusal to pay is not a violation of duty. Jay v. School District No. 1, 24 M 219, 229, 61 P 250.

#### Collateral References

Schools and School Districts \$29; 79 C.J.S. Schools and School Districts \$229; 79 C.J.S. Schools and School Districts \$344.

75-1639. (1018) Misdemeanor—penalty. When any school officer is suspended by election or otherwise, he shall immediately deliver to his successor in office all books, papers, and moneys pertaining to his office, and such officer who shall refuse to do so, or who shall willfully mutilate or destroy any such books or papers, or any part thereof, or who shall misapply any moneys entrusted to him by virtue of his office, shall be guilty of a misdemeanor, and shall be punished by a fine in the discretion of the court, not exceeding one hundred dollars.

History: En. Sec. 1805, Pol. C. 1895; re-en. Sec. 885, Rev. C. 1907; re-en. Sec. 511, Ch. 76, L. 1913; re-en. Sec. 1018, R. C. M. 1921.

#### Collateral References

Schools and School Districts 53(4), 63(2, 3).
78 C.J.S. Schools and School Districts

§§ 114, 119.

75-1640. (1019) Limitation on purchase of maps, charts, etc. The board of school trustees in any district of the third class shall not issue any warrant for maps, charts, or other apparatus, unless same is authorized and the warrant countersigned by the county superintendent.

History: En. Sec. 513, Ch. 76, L. 1913; amd. Sec. 1, Ch. 63, L. 1921; re-en. Sec. 1019, R. C. M. 1921.

#### References

State ex rel. Hessler v. District Court, 64 M 296, 301, 209 P 1052.

# Collateral References

Schools and School Districts 95(1).
79 C.J.S. Schools and School Districts
346.

# CHAPTER 17

# BUDGET SYSTEM

Section 75-1701. Application of budget system for school districts—definitions. 75-1702. Board of school budget supervisors—county superintendent to be clerk

75-1702. Board of school budget supervisors—county superintendent to be clerk—office.

75-1703. Budget form.

75-1704. Preparation of estimates of revenue.

75-1705. Notice of meeting to prepare and adopt preliminary budget.

75-1706. Preparation and adoption of preliminary budget.

75-1707. Repealed.

75-1708. Notice of filing of preliminary budget—inspection—fixing and adopting final budget.

75-1709. Estimate of receipts and statistics for apportionment.

75-1710. County treasurer's statement of eash on hand and obligations to be met.

75-1711. Repealed.

- Approval and adoption of final budgets-fixing of levies-taxpayers 75-1712. may be heard.
- 75-1713. Changes in budget by budget board—hearings—when changes for-
- 75-1713.1. Changes in budget by budget board when in excess of foundation program—restrictions on budgets.
- 75-1714. Final budget—expenditures limited to appropriations—transfers.

Transfer among appropriations—notice to treasurer.

75-1715. 75-1716. 75-1717. Emergency budgets. Filing and disposal of emergency budget. 75-1718. County treasurer to enter appropriations.

75-1719. Issuance of emergency warrants.

75-1720. Statement of total of emergency warrants—tax levy.

75-1721. Lapse of appropriations—provisions for late claims in next ensuing budget.

75-1722. Statement of requirements. 75-1723. Fixing tax levy.

75-1723.1. Allocation of federal funds to operating budgets.

- 75-1724. Record of budget-transmission to state superintendent, school trustees and county treasurer.
- 75-1725. Treasurer to open accounts for appropriation items—transfers.

75-1726. Issuance of school warrants in triplicate—disposal of copies.

75-1727. Account of warrants-insufficient appropriation-notice to clerk of exhaustion of appropriation.

75-1728. Budget supervisors and tax for joint school districts.

75-1729. State superintendent to enforce and supervise provisions of act.

75-1730. Construction of act.

(1019.1) Application of budget system for school districts— 75-1701. This act shall apply to all school districts. As used herein the definitions. term "board," "trustees" or "school trustees" shall mean the board of school trustees; the term "district" shall mean school district; the term "clerk" shall mean clerk of the school district; and the term "budget board" shall mean the board of school budget supervisors.

History: En. Sec. 1, Ch. 146, L. 1931.

#### References

State ex rel. McHose v. District Court, 95 M 230, 233, 26 P 2d 345; Chicago, M., St. P. & P. R. Co. v. Fallon County, 95 M 568, 572, 28 P 2d 462.

#### Collateral References

Schools and School Districts \$\sim 103(4). 79 C.J.S. Schools and School Districts \$ 383.

75-1702. (1019.2) Board of school budget supervisors—county superintendent to be clerk-office. There shall be in each county in the state a board of school budget supervisors which board shall be the board of county commissioners, and such board shall have, exercise and perform the powers and duties granted, imposed and prescribed by this act. The county superintendent of schools shall be the clerk of such board, and the office of said board shall be in the office of the county superintendent of schools.

History: En. Sec. 2, Ch. 146, L. 1931.

# Collateral References

Schools and School Districts 248. 78 C.J.S. Schools and School Districts

(1019.3) Budget form. The county superintendent of each county shall cause a sufficient number of budget forms to be printed for use in such county, which shall be in substantially the following form:

# 

The following budget and application for tax levies is submitted for School District.

No......for operation of schools for the school year beginning July 1, 19......

# SECTION I.—GENERAL FUND EXPENSES.

		1.	2.	3.
		Actual Expenditures Last Completed School Year.	Estimated Expenditures Ensuing School Year.	Approved Expenditures Current School Year.
1.	General control; school officers' salaries, election ex-			
	penses, census expenses, etc			\$
2.	Salaries of teachers and principals			
3.	Stationery, supplies, miscellaneous instruction, ex-			
	penses, etc.			
4.	Wages of janitors, engineers, etc.			
5.	Fuel, light, water, janitor supplies, etc			
6.	Repairs and upkeep charges			
7.	Library			
8.	Health and aid for indigent children			
9.	Transportation, rent and board for children			
10. 11.	Insurance, rent, pensions			
11.	New buildings and alterations			
12.	New equipment			
	(Not financed from sale of bonds)			
13.	Textbooks			
14.	Reserve cash to maintain school from July 1 to			
	December 1 following school year			
15.	TOTALS	\$	\$	\$

# SECTION II.—PROPOSED EXPENDITURES TO BE FINANCED BY SALE OF BONDS:

	1.	2.	3.
	Actual Expenditures Last Completed School Year.	Estimated Expenditures Ensuing School Year.	Approved Expenditures Current School Year.
<ol> <li>New buildings and grounds</li> <li>Alterations and additions to old buildings.</li> <li>New equipment</li> </ol>	\$	\$	
4. TOTALS	<i>a</i>		•
4. TOTALS		\$	(TRUSTEE) (TRUSTEE) (TRUSTEE) (TRUSTEE) (TRUSTEE)
Date of budget and application:	 CLERK O	F SCHOOL DI	STRICT.

History: En. Sec. 3, Ch. 146, L. 1931.

.....19....

# Collateral References

Schools and School Districts 48(6). 78 C.J.S. Schools and School Districts 99.

75-1704. (1019.4) Preparation of estimates of revenue. During the month of March, in each year, for each school district, the county superin-

75-1705 SCHOOLS

tendent of schools shall insert in column 1 of each schedule of the budget form the actual expenditures for each item for the last completed school year, and such county superintendent must, not later than the 10th day of April following, send or transmit such form to such school district, and such county superintendent must make out, on a separate sheet, and send with such budget form, an estimate of the revenues which the school district will probably receive during the ensuing school year, which estimate shall be in substantially the following form:

# SCHOOL DISTRICT NO......COUNTY SUPERINTENDENT'S ESTIMATE OF REVENUES FOR SCHOOL YEAR ELEMENTARY:

1.	State Apportionment, General	\$
	County Apportionment, six (6) to eight (8) mill levy	•
	General School Fund	
3.	Common School Equalization Fund	***************************************
	All other Sources, Except Tax Levies	
	Ten (10) mill Special District Levy	
6.	ESTIMATED RECEIPTS, GENERAL FUND, FROM ALL	
	SOURCES (Add Lines 1 to 5)	\$
	History: En See 4 Ch 146 T 1021	·

History: En. Sec. 4, Ch. 146, L. 1931.

75-1705. (1019.5) Notice of meeting to prepare and adopt preliminary budget. The county superintendent of schools must, during the month of May, in each year, and before the thirty-first day of such month, cause a notice to be published one (1) time in the official newspaper of the county, stating that in each school district in the county the board of trustees will meet in regular session on the fourth Monday in June, at its usual place of meeting, and will at such meeting prepare and adopt a preliminary budget for the next ensuing school year, and that any taxpayer in the district may appear at such meeting and be heard on such preliminary budget.

History: En. Sec. 5, Ch. 146, L. 1931; amd. Sec. 1, Ch. 63, L. 1941.

Collateral References
Schools and School Districts € 103(4).
79 C.J.S. Schools and School Districts

§ 383.

75-1706. (1019.6) Preparation and adoption of preliminary budget. At the regular meeting of the board of trustees of each school district on the fourth Monday in June such board must consider, prepare and adopt a preliminary budget for the next ensuing school year. Any taxpayer in the district may appear at such meeting and be heard in regard to the preliminary budget or any item or amount proposed to be included therein. Such meeting may be continued from day to day, but not exceeding three (3) days in all; provided, that in first and second class districts such meeting may be continued over a period of not more than five (5) days. When the board has determined the amount necessary to be expended for each item contained in such budget form there shall be entered in column 2 of section I and in column 2 of section II of the budget form the amount proposed to be expended during the ensuing fiscal year for each item contained in such form, and such preliminary budget shall then be signed by a majority of the trustees and the clerk of the district, and the clerk of the district must

deliver or transmit such preliminary budget, when so filled in and signed, to the county superintendent of schools on or before the first day of July. If the estimated expenditures set forth in either lines 2 or 4 shall provide for payment of salary or compensation to more than one (1) person, there shall be set forth on a separate sheet but attached to and made a part of such preliminary budget, each position or employment with the salary or compensation to be paid to each person filling the same.

History; En. Sec. 6, Ch. 146, L. 1931; amd. Sec. 2, Ch. 63, L. 1941.

75-1707. (1019.7) Repealed—Chapter 199, Laws of 1949.

Repeal as Sec. 1019.7, Revised Codes, 1935, by
This section (Sec. 7, Ch. 146, L. 1931),
authorizing an extra levy, was repealed June 1, 1949.

(1019.8) Notice of filing of preliminary budget—inspection fixing and adopting final budget. The county superintendent of schools, as clerk of the board of school budget supervisors, between the 10th and 20th days of July, in each year, must publish a notice one (1) time in the official newspaper of the county, stating that the preliminary budgets for all school districts in the county for the ensuing school year, as prepared and adopted by the boards of trustees of such districts, are on file in the office of such county superintendent as clerk of the board of school budget supervisors, and that the same are open to inspection of all taxpayers. Said notice shall also state that the board of school budget supervisors will meet at the office of the county superintendent of schools at 10 o'clock a.m. on the 4th Monday in July, for the purpose of considering and fixing and adopting the final budget, and fixing the amount of expenditures which may be made for each purpose, by each school district, which session may be adjourned from day to day until the final adoption of all school district budgets, and that any taxpayer in a school district may appear at such meeting, and at any adjournment thereof, and be heard for or against any part of the budget for his district.

History: En. Sec. 8, Ch. 146, L. 1931.

75-1709. (1019.9) Estimate of receipts and statistics for apportionment. Immediately after the 30th day of June, the county superintendent of schools must attach to the preliminary budget for each school district an estimate of receipts and statistics for apportionment, which shall be in substantially the following form:

# ESTIMATE OF RECEIPTS FOR GENERAL FUND AND STATISTICS FOR APPORTIONMENT SECTION III.—GENERAL FUND RECEIPTS

		Actual Receipts Last School Year.	Estimated Receipts Current School Year.
	State apportionment, general	\$	\$
2.	County apportionment, from six (6) to eight (8) mill general		
0	school levy		
	All other sources, except from tax levies		
4.	An other sources, except from tax levies		
5.	TOTALS	\$	\$

Census	s (6 to 21 years)	; Average Daily Attendance last year
••••	; No. Teachers	••••••
History:	En. Sec. 9, Ch. 146, L. 1931.	References
		State ex rel. School District No. 8 v. Lensman, 108 M 118, 121, 88 P 2d 63.

75-1710. (1019.10) County treasurer's statement of cash on hand and obligations to be met. After the county superintendent has attached such schedule or schedules to the preliminary budget for each school district, and before the 10th day of July, the county treasurer must prepare statements for each school district showing the amount of cash on hand at the close of the last school year, obligations to to be met during the current school year, and details of bonds outstanding, which statements must be attached to the preliminary budget for such school districts, and which statements shall be substantially in the following form:

# INFORMATION TAKEN FROM RECORDS OF COUNTY TREASURER'S OFFICE.

# SECTION IV.—CASH ON HAND AND OBLIGATIONS TO BE MET:

A. Cash on hand June 30 (including reserve) B. Amount of Outstanding Warrants	\$
<ul><li>II. For the District Transportation Fund</li><li>A. Cash on hand June 30 (including reserve)</li><li>B. Amount of Outstanding Warrants</li></ul>	
III. For the District Bus Depreciation Reserve Fund A. Cash on hand June 30	***************************************
<ul><li>IV. For the District Self-Supporting School Lunch Fund</li><li>A. Cash on hand June 30</li><li>B. Amount of Outstanding Warrants</li></ul>	
V. For the District Tuition Fund A. Cash on hand June 30 B. Amount of Outstanding Warrants	•
VI. For the District Retirement Fund A. Cash on hand June 30 B. Amount of Outstanding Warrants	•
VII. For the District Debt Service Fund A. Cash on hand June 30 B. Amount of Outstanding Warrants	
VIII. For the District Miscellaneous Federal Funds A. Cash on hand June 30 B. Amount of Outstanding Warrants	•
IX. For the District Building Fund A. Cash on hand June 30 B. Amount of Outstanding Warrants	•••••
2. Zimodily of Ottobulliding Williams	****************

		DODGE	e section.		10 1110
X. For the District Self-Supporting Housing and Dormitory Fund A. Cash on hand June 30 B. Amount of Outstanding Warrants XI. For any Other Required Fund of the District A. Cash on hand June 30 B. Amount of Outstanding Warrants  SECTION V.—DETAILS OF BONDS ISSUED AND OUTSTANDING					
Amount	of Issue Amount Outstanding	Date of Issue	Date of Maturity	Rate of Interest	Sinking Fund Requirements for Principal for Each Year.
County Treasurer.  Before the 10th day of July, the county treasurer shall prepare statements for each of the county school funds supported by county-wide levies, showing the amount of cash on hand at the beginning of the immediately preceding fiscal year, the receipts, the disbursements, the amount of cash on hand at the close of the year, and the amount of any outstanding warrants, which statements shall be transmitted to the county superintendent by the 10th day of July, and which statements shall be substantially in the following form:					
1. For the County Common School Fund A. Cash on hand July 1 (preceding year) B. Receipts 1. From 10-mill levy 2. From other sources (specify) a.					

3. Total Receipts

an

C.	Total Available for Disbursement (A+	-B3)	
D.			
	1. For foundation program	ф	
	equalization (1) (2) Front transport at instance (1) (2) (3)	,,, <b>\$</b> ;	
	2. For transportation		
	reimbursement		 ф
777	3. Total Disbursements		\$
E.	Cash on hand June 30 (C-D3)		
2.	For the County's High School Ten-Mill- Levy Fund		
A.	Cash on hand July 1 (preceding year)	)	\$
В.	Receipts from 10-mill levy		
C.	Total Available for		
	Disbursement (A+B)		***************************************
D.	Disbursements		
	1. For foundation program		
	equalization	\$	
	2. For tuition payments	************	
7.7	3. Total Disbursements		\$
E.	Cash on hand June 30 (C-D3)		
3.	For the County's High School Transportation Fund		
Α.	Cash on hand July 1 (preceding year)		ф
В.	Receipts from county-wide levy		φ
С.	Total Available for Dis-		
0.	bursement (A+B)		
D.	Disbursements		***************************************
E.	Cash on hand June 30 (C-D)		***************************************
4.	For the County's High School Re-		
4.	tirement Fund		
Α.	Cash on hand July 1 (preceding year)		ф
В.	Receipts from county-wide levy		φ
C.	Total Available for Disburse-		
0.	ment (A+B)		
D.	Disbursements		
E.	Cash on hand June 30 (C-D)		
	ory: En. Sec. 10, Ch. 146, L. 1931; Referen	nces	
id. S	ec. 3, Ch. 62, L. 1961. State	ex rel. School Dis	strict No. 8 v.
	Lanaman	100 W 110 101 0	00 D 01 69

75-1711. (1019.11) Repealed—Chapter 50, Laws of 1947.

75-1712. (1019.12) Approval and adoption of final budgets—fixing of levies—taxpayers may be heard. On the fourth Monday in July, at the hour of 10 o'clock a. m., the board of school budget supervisors of each county shall meet in the office of the county superintendent of schools. The county superintendent, as clerk of said budget board, shall lay before the budget board all of the preliminary budgets adopted by the trustees of the several school districts of the county, with the county superintendent's and

county treasurer's statements and the county clerk's certificate attached thereto, and said budget board shall proceed to examine and consider such budgets. The board may adjourn its meeting from day to day but must approve and adopt the final budget for each school district and fix and determine the amount to be raised by tax levies for each such school district not later than the second Monday in August and before the fixing of tax levies for such districts. At such meeting, and at all adjournments thereof, any taxpayer in any district may appear before the budget board and be heard on the budget for such district and on any item or amount contained therein.

History: En. Sec. 12, Ch. 146, L. 1931.

75-1713. (1019.13) Changes in budget by budget board—hearings when changes forbidden. (1) At such meeting the budget board shall have the power to make any changes or corrections it may deem necessary or proper in any item or amount contained in SECTIONS I, II, or III of any budget, either by eliminating or striking out any item or amount contained therein, or by increasing or reducing the amount for any item, and when it appears to the budget board that the amount proposed to be expended for any item, as shown by the preliminary budget, is in excess of the amount actually required to be expended for such item, the board must reduce such amount to the amount actually required to be expended therefor; provided, that the budget board must, before making any such change or correction in the preliminary budget of any district, afford the trustees and clerk of the district an opportunity to be heard thereon, and provided further, that if at any such hearing the trustees of any district and the budget board are unable to agree on the amount to be expended for any such item, the board of trustees by majority vote of all members of the board, may finally fix and determine such amount, and the amount so fixed cannot thereafter be changed by the budget board.

If it shall appear to the budget board that the amount which may be raised for the general fund of any school district by tax levies within the limits prescribed by law and which the board of county commissioners is authorized to levy, when added to the amount of the county superintendent's estimate of receipts for such district, as set forth in SECTION III of the preliminary budget, will not be sufficient to pay the full amount of estimated expenditures for all purposes to be paid from the general fund of the district, as set forth in SECTION I of said preliminary budget, then the budget board must reduce or strike out the amounts proposed to be expended for one (1) or more items, as shown in the preliminary budget, in such manner and to such extent that the total estimated expenditures, as shown in said SECTION I of the preliminary budget, will not exceed the total amount of such estimated receipts and proceeds of the lawful tax levies which may be made for the general fund of the district; provided, that for the purpose of determining for what particular items contained in the preliminary budget the amounts to be expended are to be reduced or stricken out, the budget board may call in and question the members of the board of trustees and the clerk of such district, and in reducing or striking out such amounts the budget board shall be guided as far as

possible by their wishes; provided, further, that if any contract has been entered into between the board of trustees of any school district and any teacher, principal or other person, by the terms of which contract such teacher, principal or other person has been employed for the school year for which the preliminary budget has been prepared, or when any teacher or principal, by reason of employment during the last school year, is entitled under the provisions of section 75-2401, to retain his position and salary during the school year for which the preliminary budget was prepared, the board of school budget supervisors must not make any change in any item for salaries or wages which will reduce or in any manner affect the salary or wages of such teacher, principal or other person.

History: En. Sec. 13, Ch. 146, L. 1931.

75-1713.1. Changes in budget by budget board when in excess of foundation program—restrictions on budgets. If the total amount of the proposed elementary general fund expenses in the preliminary budget of any district shall exceed the foundation program of such district, the budget board shall. in the manner and subject to the limitations prescribed by section 75-1713, reduce such proposed general fund expenses to a total equal to said foundation program unless the board of trustees of said district shall establish to the satisfaction of the budget board that special circumstances exist which justify such additional expenses, and in such event a statement of the reasons for the allowance of such additional expenses shall be attached to said budget and signed by the chairman of the budget board, but the entire amount of such excess expense over the foundation program shall be paid solely from levies upon the property in such district and shall not in any manner increase the amounts to be apportioned hereunder from the county common school levy or from the state public school equalization fund; and provided, that, except in the case of the existence of the emergencies specified in section 75-1716, the entire amount of such additional expense over the foundation program to be included in the budget of any district shall not be greater than thirty per cent (30%) of the foundation program of any school; provided that nothing herein contained shall be construed as preventing the voting of an additional levy in accordance with the general school laws pertaining to the voting of additional levies.

History: En. Sec. 9, Ch. 199, L. 1949; amd. Sec. 1, Ch. 208, L. 1951.

Cross-Reference

Foundation program, sec. 75-3612.

Collateral References

Schools and School Districts 93.
79 C.J.S. Schools and School Districts 343.

75-1714. (1019.14) Final budget—expenditures limited to appropriations—transfers. When the budget board has determined and fixed the amount which may be expended for each item in the budget of a school district, it shall enter the amount so fixed for each item in column 3, of SECTION I of the budget, and the amount so entered in such column for each item and the total of all amounts so entered in such column shall constitute the final budget and the appropriations for each school district for the current school year, and the board of school trustees and all officers and employees of such district shall be limited in the making of expenditures or

incurring of liabilities to the amount of such detailed appropriations, respectively; provided that transfers may be made from the appropriation of one (1) item to the appropriation for any other item, as hereinafter provided; expenditures made, liabilities incurred or warrants issued in excess of any of the final budget detailed appropriations, as originally determined, or as revised by transfer, as hereinafter provided, shall not be a liability of the district and no money of the district shall ever be used for the purpose of paying the same.

History: En. Sec. 14, Ch. 146, L. 1931.

# Approval of Budget Prerequisite to Issuing Warrants

Where county commissioners had refused to approve a school district budget on the ground the district had not been legally created, which contention was found invalid by the court, although time for action on the budget and levy of taxes had passed, board will be compelled to act by mandamus since approval of the budget is a necessary prerequisite to the issuance of warrants under section 75-1714 and the district being valid and having funds available from other sources, it should be enabled to issue warrants to meet its expenses. State ex rel. School District No. 8 v. Lensman, 108 M 118, 130, 88 P 2d 63.

# Separation of Appropriations

Under the School District Budget Act, each item in the district's budget constitutes an appropriation for a definite and specific purpose, and an appropriation for one purpose may not be paid out for another, except that a part of an appropriation for one item may be transferred to another when it appears that there is an excess appropriation for the one and a deficiency in the other. State ex rel. McHose v. District Court, 95 M 230, 233, 26 P 2d 345.

#### Collateral References

Schools and School Districts 103(4). 79 C.J.S. Schools and School Districts 383.

75-1715. (1019.15) Transfer among appropriations—notice to treasurer. Whenever it appears to the clerk of any school district that the amount appropriated for any item in the final budget is in excess of the amount actually required to be expended for such item during the year for which such budget was adopted, and that the amount appropriated for any other item in such final budget, and payable from the same fund, is less than the amount which will be actually required for such item during such school year, the clerk of such school district may notify the county treasurer in writing to transfer the excess appropriation, or so much thereof as may be necessary, from one (1) item to the item for which the appropriation is deficient, and the county treasurer must thereupon make a transfer of such amount.

History: En. Sec. 15, Ch. 146, L. 1931.

75-1716. (1019.16) Emergency budgets. (1) Whenever the board of trustees of a school district maintaining an elementary school or schools, at any time after December 31st of any school year, shall deem that an emergency exists by reason of an increase in the enrollment and attendance over that of the immediately preceding school year over and beyond the extent which such increase might reasonably have been anticipated at the time of the adoption of the budget for the then current school year, and that because of such increase in enrollment and attendance the budget approved and adopted for the then current school year does not provide sufficient funds to properly maintain and support such school or schools during the whole of the then current school year; or shall at any time during a school year deem that an emergency exists because of the destruction of any school property necessary to the maintenance of school, or

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its impairment by fire, flood, storm, riot, insurrection or other act of God, to such an extent as to render it unfit or prevent its use for the school purposes for which theretofore used; or because of the entering by a court of competent jurisdiction of a judgment for damages against the district, or the enactment of legislation, after the adoption of the final budget, requiring expenditures not contemplated therein, such board of trustees by unanimous vote of all members of the board present at any meeting, the time and place of holding [of] which all of the trustees shall have had reasonable notice, may adopt and enter upon their minutes a resolution, stating the facts constituting the emergency, the estimated amount of money required to meet such emergency, and the time and place when the board will meet for the purpose of considering and adopting an emergency budget for such current school year.

- (2) A copy of such resolution shall be published one (1) time in the newspaper of the district, most likely to give notice thereof to the people of the district concerned, and if there is no newspaper located in the district then publication shall be in the official newspaper of the county, a copy thereof shall be posted at the schoolhouse, or at each schoolhouse if there be more than one in the district, and at the post office, if there be one in the district, and a copy thereof shall be delivered to the county superintendent of schools and another copy delivered to the county clerk as clerk of the board of county commissioners of the county in which the school district is situated. The time designated in such notice for such meeting shall not be less than one (1) week after publication, posting and delivery of such copies of resolution. Such meeting shall be open to the public and any taxpayer in the district shall have the right to appear and be heard.
- (3) If at such meeting a majority of the members of the board of trustees shall find that any such emergency actually exists, such board may make and adopt a preliminary emergency budget setting forth fully the facts constituting the emergency. If the emergency is due to increased enrollment and attendance the budget shall be so itemized as to show the amount appropriated therein for each item of instructional cost, maintenance of plant, operation of plant and auxiliary agencies, in the order in which such items are required to be set out in the annual budget by section 75-1703, and the total amount to be appropriated for all such items, provided that the maximum amount which may be so appropriated in such emergency budget shall be determined in the following manner; the amount appropriated in the annual budget for the maintenance and support of such school or schools for the then current school year, less amounts appropriated as capital outlay for new buildings and alterations and new equipment, and reserve for the following school year, shall be divided by the number of pupils originally enrolled in such school or schools during the immediately preceding school year so as to ascertain the amount budgeted therein, less amounts appropriated for such capital outlay and reserve, for each such enrolled pupil, and such amount for each such enrolled pupil shall be multiplied by the increase in the number of pupils enrolled for the current school year over the number enrolled for the immediately preceding

school year. The total amount appropriated in the emergency budget must not exceed such maximum amount.

(4) In the event of any other emergency described in this section, the preliminary emergency budget shall state the amount to be appropriated therein as definitely as possible the details of the proposed expenditures of the appropriation. Three (3) copies of the emergency budget shall be furnished the county superintendent of schools and such county superintendent must lay one (1) copy thereof before the board of county commissioners, which constitutes the board of school budget supervisors for the county, at the next regular meeting of such board. Such board shall have the power to make such change in such budget, if any, as it may deem proper and necessary, and shall then approve such budget, either as adopted by the board of school trustees, or as changed by the board of county commissioners.

History: En. Sec. 16, Ch. 146, L. 1931; amd. Sec. 1, Ch. 193, L. 1943; amd. Sec. 1, Ch. 134, L. 1945; amd. Sec. 1, Ch. 124, L. 1959.

# Compiler's Note

The bracketed word "of" was inserted in subd. (1) by the compiler.

# Judgment Debt as Emergency

A judgment secured by a teacher against a school district in December, 1932, was not paid, and in August, 1933, she instituted mandamus proceedings to compel payment. At that time the district, working under the budget system, had funds on hand no longer covered by appropriations made under the 1932-33 budget, to

pay the claim. The district court erred in dismissing mandamus proceeding, in that the claim of relatrix constituted an emergency within the meaning of this section, excepted from the operation of the budget law, and which it was the duty of the board of trustees to meet by payment even though it had in the meantime attempted to utilize such funds in making up the budget for 1933-34. State ex rel. McHose v. District Court, 95 M 230, 233, 26 P 2d 345.

#### Collateral References

Schools and School Districts 103(4). 79 C.J.S. Schools and School Districts 383.

75-1717. Filing and disposal of emergency budget. After the emergency budget has been approved by the board of county commissioners it shall be filed in the office of the county superintendent of schools who shall immediately notify in writing the clerk of the board of school trustees of the approval of such budget and of any changes which may have been made therein by the board of county commissioners. The county superintendent shall endorse on the two additional copies of the budget furnished by the board of school trustees the date of approval and any changes made therein, transmitting one thereof to the state superintendent of public instruction and delivering the other to the county treasurer.

History: En. Sec. 2, Ch. 134, L. 1945.

75-1718. County treasurer to enter appropriations. The county treasurer, upon receiving such copy, shall enter in the budget accounts of such school district on his books the amount appropriated for each of the several items for which appropriations are made.

History: En. Sec. 3, Ch. 134, L. 1945.

75-1719. Issuance of emergency warrants. After the approval of such emergency budget, if the budget is to provide additional funds for the maintenance and support of the school or schools, whenever the amount appropriated for any item in the annual budget for such current school

History: En. Sec. 4, Ch. 134, L. 1945.

75-1720. Statement of total of emergency warrants—tax levy. county treasurer shall, not later than the first Monday in August of the following school year, make out a statement for such school district showing the total amount of such emergency warrants issued then outstanding and unpaid, and the amount of money, if any, in the general fund of the school district applicable to the payment thereof, and the amount for the payment of which a special tax levy should be made, and deliver the same to the board of county commissioners. Such board shall, on the second Monday in August, make and fix a levy against the taxable property in the school district which will raise sufficient funds to pay such outstanding emergency warrants, with interest thereon, and the county treasurer shall, when collected, place the same in a special fund and use the same to pay such outstanding emergency warrants with interest thereon. If after all such emergency warrants have been paid any amount remains in such special fund it shall be, by such county treasurer, transferred to the general fund of the school district.

History: En. Sec. 5, Ch. 134, L. 1945.

75-1721. (1019.17) Lapse of appropriations—provisions for late claims in next ensuing budget. All appropriations, other than appropriations for uncompleted improvements in progress of construction, shall lapse at the end of the school year; provided that appropriation accounts shall remain open for a period of twenty (20) days thereafter for the payment of claims incurred against such appropriations prior to the close of the school year and remaining unpaid. After such period shall have expired all appropriations, except as hereinbefore provided regarding uncompleted improvements, shall be null and void and any lawful claim presented thereafter against any such appropriation shall be provided for in the next ensuing budget.

History: En. Sec. 17, Ch. 146, L. 1931.

Collateral References
Schools and School Districts
93.
79 C.J.S. Schools and School Districts

75-1722. (1019.18) Statement of requirements. After the budget of each district has been completed, approved and finally adopted, the budget

board shall prepare a statement and attach the same to such budget, showing the amounts necessary to be raised by tax levies in such district, which statement shall be substantially in the following form:

# SUMMARY OF REQUIREMENTS.

## SECTION VI.—MAINTENANCE OF SCHOOLS.

1.	Requirements for all schools, current school year\$	
	(Line 15 SECTION I)	
2.	Registered Warrants per Treasurer's statement	
3.	TOTAL (Add lines 1 and 2)	
4.	Cash on hand as per Treasurer's statement	
5.	General Fund receipts, as estimated	
	(Line 5 SECTION III.)	
6.	TOTAL (Add lines 4 and 5)	
	AMOUNT TO BE RAISED BY SPECIAL LEVY,	
	GENERAL FUND	
	(Subtract line 6 from line 3)	
	NUMBER OF MILLS TO BE LEVIED FOR	
	DISTRICT GENERAL FUND	
	SECTION VII.—BOND SINKING AND INTEREST FUNDS:	
1.	Amount to be raised for Sinking and Interest Fund, or	
	Principal of Bonds to be paid Current Year\$	
2.	Amount of Bond Interest to be paid Current Year	
	AMOUNT TO BE RAISED BY SPECIAL LEVY BOND	
	SINKING AND INTEREST FUND (Add lines 1 and 2) \$	
	NUMBER OF MILLS TO BE LEVIED FOR BOND	
	SINKING AND INTEREST FUND	
	History: En. Sec. 18, Ch. 146, L. 1931.	

75-1723. (1019.19) Fixing tax levy. The county superintendent of schools, as clerk of the school budget board, shall, when the board of county commissioners meet on the second Monday in August for the purpose of fixing tax levies, lay before such board the elementary school budgets for all school districts in the county, as finally adopted and approved by the school budget board, and it shall be the duty of the county commissioners of each county in the state to fix and levy a tax of five (5) mills on the dollar of the taxable value of all school districts within the county, provided that if a levy of less than five (5) mills will be sufficient to meet the approved budget of any school district, then such lesser levy shall be made, but no school district levying less than five (5) mills shall receive any apportionment from the state public school equalization fund.

It shall further be the duty of the county commissioners of each county in the state to fix and levy a tax for each school district in the county within the limitations prescribed by this act in such number of mills as will produce the amount shown by the final budget to be raised by tax levy which may also include a reserve fund, not to exceed thirty-five per cent

(35%) of the amount appropriated in the final and approved budget for the then current school year, for the purpose of maintaining the elementary and high school of the district from July 1 to November 30 of the next succeeding year; provided that such school district tax plus federal reimbursements in lieu of taxes shall not, unless approved by a vote of the taxpaying electors, exceed the rate of levy required to produce an amount equal to the foundation program and the additions thereto, within the limitations of thirty per cent (30%), hereinbefore specified, and provided, further, that such last mentioned additional school district tax shall not, in any event, exceed fifteen (15) mills unless the excess above said fifteen (15) mill limitation shall first have been authorized at an election held in accordance with the general school laws pertaining to the voting of additional levies, save and except that in any district wherein more than fifteen (15) mills is required to reach the thirty per cent (30%) limit above the foundation program, such increase above the fifteen (15) mill limit may be financed by federal reimbursements in lieu of taxes without a vote of the taxpayers up to the thirty per cent (30%) limit above the foundation program.

History: En. Sec. 19, Ch. 146, L. 1931; amd. Sec. 10, Ch. 199, L. 1949; amd. Sec. 2, Ch. 208, L. 1951; amd. Sec. 1, Ch. 247, L. 1953; amd. Sec. 1, Ch. 247, L. 1961.

NOTE.—The word "hereinbefore" as used in this section probably refers to sec. 75-1713.1.

#### Cross-Reference

Crippled children, levy for instruction, sec. 75-1406.

75-1723.1. Allocation of federal funds to operating budgets. Federal funds received by a school district under the provisions of Public Law 874, or funds designated in lieu thereof by the Congress of the United States, may be allocated to the various operating budgets of the school district by the board of trustees of the school district.

History: En. Sec. 2, Ch. 247, L. 1961.

## Compiler's Note

Public Law 874 of the 81st Congress, referred to above, is compiled as sections 236 to 244, Title 20, U. S. Code.

75-1724. (1019.20) Record of budget—transmission to state superintendent, school trustees and county treasurer. After the final budget for each school district has been approved and adopted by the budget board, the county superintendent as clerk of such board shall file such final budget in the office of the budget board, and shall make a full and complete copy thereof and transmit said copy to the state superintendent of public instruction on or before the first day of September. And the county superintendent shall, before the first day of September, send to the board of school trustees of each school district, and deliver to the county treasurer, a copy of so much of the final budget for such district, as approved and adopted by such budget board, as shows the different items for which appropriations were approved by such budget board and the amount of the appropriation approved for each such item.

History: En. Sec. 20, Ch. 146, L. 1931.

75-1725. (1019.21) Treasurer to open accounts for appropriation items—transfers. When the county treasurer has received from the county

superintendent, as clerk of the budget board, a copy of so much of the budget for each school district as shows the items and appropriations approved by the budget board, as provided in section 75-1724, the county treasurer shall open an account on his books with each school district for which a final budget was adopted, and shall enter in such account each item for which any appropriation was made in such final budget and the amount appropriated therefor. If the clerk of any school district shall direct the county treasurer to transfer any amount from one (1) item of the final budget to another item of such budget, as authorized in this act, the county treasurer shall make such entries in the account of such school district as will show such transfer.

History: En. Sec. 21, Ch. 146, L. 1931.

#### Collateral References

Schools and School Districts 93. 79 C.J.S. Schools and School Districts

(1019.22) Issuance of school warrants in triplicate—disposal of copies. The clerk of each school district must issue all warrants drawn against any fund of the district in triplicate, and each thereof shall show on its face the particular item appropriation as set forth in the final budget, against which the warrant is drawn. The original warrant shall be delivered to the person entitled thereto; the duplicate, across the face of which shall be printed or endorsed "Not Negotiable-Copy for County Treasurer," shall be mailed to the county treasurer immediately after the original has been drawn and signed; and the triplicate, across the face of which shall be printed or endorsed "Not Negotiable-Copy for Clerk of School District," shall be retained by the clerk of the school district as a receipt for such disbursement.

History: En. Sec. 22, Ch. 146, L. 1931.

#### Cross-Reference

Interest on warrants, sec. 16-2604.

#### References

State ex rel. School District No. 8 v. Lensman, 108 M 118, 130, 88 P 2d 63.

Collateral References

Schools and School Districts \$\sim 95(2)\$. 79 C.J.S. Schools and School Districts \$ 347.

75-1727. (1019.23) Account of warrants—insufficient appropriation notice to clerk of exhaustion of appropriation. Immediately on receiving the duplicate of any warrant issued by any school district the county treasurer shall enter in the account for such school district, under the proper item of appropriation, the amount of such warrant and the number thereof, so that each item of appropriation for such school district will, at all times, show the amount of the unexpended appropriation made therefor in the final budget.

Whenever the account of any school district shows that the amount appropriated for any item by the final budget has been exhausted, or that the amount for which any warrant has been drawn is greater than the unexpended balance appropriated for such item, the treasurer must note such fact on the account when entering the amount of such warrant in such account, and must not pay the original warrant, or register the same, when presented to him, but he shall endorse across the face thereof the "Payment 75-1728 SCHOOLS

and Registration Refused Account Insufficient Appropriation" and return the same to the person presenting it for payment or registration.

Whenever it appears to the county treasurer, after entering the amount of any warrant in the account of any school district, that the item appropriation against which the warrant is issued is so nearly exhausted that the issuance of any additional warrant or warrants against the same will exhaust or exceed such appropriation, the treasurer shall immediately notify the clerk of the school district of such condition and that no warrant must be issued by such clerk against such appropriation item which will exceed the unexpended balance of the appropriation therefor.

History: En. Sec. 23, Ch. 146, L. 1931.

Collateral References

Schools and School Districts \$\infty 95(4)\$. 79 C.J.S. Schools and School Districts \$ 350.

75-1728. (1019.24) Budget supervisors and tax for joint school districts. In the case of a joint school district when all of the schools are located in one (1) county, the county superintendent, the board of school budget supervisors and the county treasurer of the county in which the school or schools of the district are located, shall be the county superintendent, the budget board and the county treasurer to perform the duties imposed by this act with reference to the budgets for such joint districts. When schools of a joint district are located in both counties the superintendent of schools, the budget board of the county and the county treasurer to perform the duties imposed by this act with reference to the budget for such joint district shall be designated by the state superintendent of public instruction.

The county treasurer for the joint district, as herein determined, shall be the county treasurer to receive any disbursements of state funds made for the joint district in accordance with the laws of the state.

History: En. Sec. 24, Ch. 146, L. 1931; amd. Sec. 1, Ch. 151, L. 1961.

75-1729. (1019.25) State superintendent to enforce and supervise provisions of act. The state superintendent of public instruction shall have general supervision over the enforcement of the provisions of this act, and shall have the power and it shall be the duty of such superintendent to adopt and promulgate suitable and proper rules and regulations to secure such enforcement and to require compliance therewith. The state superintendent of public instruction shall, whenever it is deemed necessary to secure proper enforcement of the provisions of this act, make such changes as may be deemed necessary in any of the forms, statements or schedules contained in this act, and shall furnish each county superintendent with a copy of all such forms and statements, and it shall be the duty of each county superintendent to cause a sufficient number of such forms to be printed for use in the county.

History: En. Sec. 25, Ch. 146, L. 1931.

References

State ex rel. School District No. 29 v. Cooney, 102 M 521, 526, 59 P 2d 48.

75-1730. (1019.26) Construction of act. This act shall not be construed to create any new fund or funds or to authorize a tax levy to be made for

any fund in excess of the limitation now prescribed by existing law, or acts amendatory thereof.

History: En. Sec. 26, Ch. 146, L. 1931.

## CHAPTER 18

#### SCHOOL DISTRICTS

Section 75-1801. School district defined.
75-1802. Classifications of districts—number of trustees.
75-1803. Powers as body corporate.
75-1804. Limitation in creating or changing boundaries of districts.
75-1805. Creation of new districts out of other districts—change of boundaries.
75-1806. Selection of trustees.
75-1807. Apportionment of moneys to new districts.
75-1808. Division of district funds and property.

75-1809. Distribution of indebtedness.

75-1810. Indebtedness to remain against original territory upon creation of new school district.

75-1811. Trustees to issue interest-bearing warrants.

75-1812. County commissioners to levy tax for interest-bearing warrants.

75-1813. Consolidated districts—procedure in event of consolidation—bonded debts.

75-1814. Joint districts—formation, control, discontinuance. 75-1815. Joint districts—apportionment of school money.

75-1815. Joint districts—apportionment of school money. 75-1816. Determination of levy in joint school districts.

75-1817. Levy of tax in joint school districts. 75-1818. Dissolution of joint school districts.

75-1819. Abandonment of joint school district, for what reasons—procedure—disposal of territory.

75-1820. Declaration of validity of school districts created out of joint districts.

75-1821. Limitation on creation of new school districts.

75-1822. Apportionment of funds and property on dissolution of joint school districts—indebtedness.

75-1823. Copy of adjustment agreement to be furnished treasurer—notice to board of equalization of change of boundaries, when.

75-1824. Repealed.

75-1825. Acceptance of gifts and legacies authorized—endowment fund.

75-1826. Composition of endowment fund.

75-1827. Use and investment of endowment fund—disposal of fund of abandoned districts.

75-1828. County treasurer to be custodian of endowment fund—investment—restriction.

75-1829. Separation of endowment fund from other funds—liability of treasurer—reports.

75-1830. Memorials for donors to be provided.

75-1831. Examination of school district books—accounting methods to be prescribed—reports.

75-1832. Failure to properly keep books—penalty—county attorney to prosecute—costs of action.

75-1833. Filing report of result of examination of school district books.

75-1834. County commissioners to furnish blanks and forms.

History: En. Sec. 1750, Pol. C. 1895; 400, Ch. 76, L. 1913; re-en. Sec. 1020, re-en. Sec. 839, Rev. C. 1907; re-en. Sec. R. C. M. 1921.

#### Cross-Reference

Apportionment of funds from state fish and game commission, sec. 26-134.

#### School District Defined

This section defines a school district to be "the territory under the jurisdiction of a single board, designated as board of trustees." It is clear that the term "school district" has reference solely to the public school system. Box v. Duncan, 98 M 216, 222, 38 P 2d 986.

#### References

O'Brien v. School District No. 1, 68 M 432, 434, 219 P 1113; State v. McGraw,

74 M 152, 156, 240 P 812; Waddell v. School District No. 3, 79 M 432, 441, 257 P 278.

#### Collateral References

Schools and School Districts 21.
78 C.J.S. Schools and School Districts
24.

47 Am. Jur. 304, Schools, §§ 12 et seq.

Right of school district to maintain action based on misapportionment of school money. 105 ALR 1273.

Tort liability of public schools and institutions of higher learning. 160 ALR 7.

75-1802. (1021) Classifications of districts—number of trustees. All districts having a population of eight thousand (8000) or more shall be districts of the first class. All districts having a population of one thousand (1000) or more, and less than eight thousand (8,000) shall be districts of the second class, and all districts having a population of less than one thousand (1,000) shall be districts of the third class. In districts of the first class the number of trustees shall be seven (7); in districts of the second class the number of trustees shall be five (5), and in districts of the third class the number of trustees shall be three (3).

Whenever the population of any school district shall increase beyond or decrease below the number required as specified above for a certain class of school district as determined by the federal census next preceding, the county superintendent of schools shall declare such school district to be changed to the proper class. The county superintendent of schools shall take the necessary steps to provide that at the next school election to elect the proper number of school trustees as designated above and to fill all vacancies due to any change of classification. Provided however that the provisions of this act shall not affect the terms of trustees heretofore elected.

History: En. Sec. 401, Ch. 76, L. 1913; re-en. Sec. 1021, R. C. M. 1921; amd. Sec. 1, Ch. 85, L. 1943.

#### References

State ex rel. Hoagland v. School District No. 13, 116 M 294, 297, 151 P 2d 168.

## Collateral References

Schools and School Districts \$\infty 21, 52.
78 C.J.S. Schools and School Districts \$\§ 24, 105.

75-1803. (1022) Powers as body corporate. Every school district constituted and formed as provided in these codes shall be and is hereby declared to be a body corporate, and under its own proper name or number as such corporate body may sue and be sued, contract and be contracted with, and may acquire, purchase, and hold and use personal or real property for school purposes mentioned in these codes, and sell and dispose of the same.

History: En. Sec. 1759, Pol. C. 1895; re-en. Sec. 848, Rev. C. 1907; re-en. Sec. 402, Ch. 76, L. 1913; re-en. Sec. 1022, R. C. M. 1921. Cal. Pol. C. Sec. 1575.

## Continuation in Existence

A school district lawfully organized is a public corporation and remains such until disorganized in some manner recognized by law. State ex rel. School District No. 28 v. Urton, 76 M 458, 463, 248 P 369.

#### De Facto Corporation

It would seem that where a school district attempted in good faith to annex another district under an existing law providing for annexation but mistakenly proceeded under a law permitting the extension of its boundaries by taking in part of another district, and the district thus created was acquiesced in by all concerned for more than five years, it was a corporation de facto and the legality of its existence was not open to collateral attack by resident taxpayers in an action to enjoin the sale of bonds issued by the district. Henderson v. School District No. 44, 75 M 154, 156, 242 P 979, distinguished in 83 M 282, 291, 272 P 543.

## Negligence Liability

In the absence of statute imposing liability for negligence upon school districts or their trustees, they may not be held liable, although this section contains the general provision that a school district may sue and be sued. Perkins v. Trask, 95 M 1, 7, 23 P 2d 982, distinguished in 118 M 586, 587, 169 P 2d 229.

#### Powers of District

School districts are public corporations, but their powers are very limited and they can exercise none except such as are conferred by the law creating them,

either expressly or by fair implication. Jay v. School District No. 1, 24 M 219, 232, 61 P 250.

A school district is a body corporate, but does not possess the powers of local legislation and control which are the distinguishing characteristics of a municipal corporation. Hersey v. Neilson, 47 M 132,

141, 131 P 30.

A school district is a public corporation, but with very limited powers. It may, through its board, exercise only such authority as is conferred by law, either expressly or by necessary implication. Finley v. School District No. 1, 51 M 411, 415, 153 P 1010. See also State v. McGraw, 74 M 152, 156, 240 P 812; Day v. School District No. 21, 98 M 207, 38 P 2d 595.

#### References

School District No. 2 v. Richards, 62 M 141, 147, 205 P 206; O'Brien v. School District No. 1, 68 M 432, 434, 219 P 1113; Plath v. Hi-Ball Contractors, Inc., — M —, 362 P 2d 1021, 1024.

## Collateral References

Schools and School Districts 21, 64, 78. 78 C.J.S. Schools and School Districts §§ 24, 239, 270.

Power of school district to employ counsel. 75 ALR 2d 1339.

75-1804. (1023) Limitation in creating or changing boundaries of districts. No school district shall be created nor boundaries changed between March 1st and July 1st of any calendar year.

History: En. Sec. 1760, Pol. C. 1895; re-en. Sec. 849, Rev. C. 1907; re-en. Sec. 403, Ch. 76, L. 1913; amd. Sec. 1, Ch. 69, L. 1917; re-en. Sec. 1023, R. C. M. 1921; amd. Sec. 1, Ch. 18, L. 1923; amd. Sec. 1, Ch. 37, L. 1933; amd. Sec. 1, Ch. 56, L. 1961.

## Consolidation of High Schools

This section (as amended by Ch. 18, Laws 1923) was not impliedly repealed by section 75-4233, authorizing boards of county commissioners to consolidate county high schools, subject to the approval by the state superintendent of public instruction. Box v. Duncan, 98 M 216, 38 P 2d

Action of the board of county commissioners, taken under section 75-4233, ordering the consolidation of the high schools in two towns in a county in March 1934, thus in effect creating a new school district at least for high school purposes, was contrary to this section. Box v. Duncan, 98 M 216, 38 P 2d 986. (Mr. Justice Angstman dissenting.)

## Relation Back of Order

Though under this section district boun-

daries may not be changed between March 1 and July 1 of any calendar year, the district court, on application for writ of mandate properly ordered a superintendent to hear a petition to have unattached territory annexed to two adjoining districts erroneously denied by him, nunc pro tune as of February 17th of the preceding year when he should have acted, his action thereby relating back. State ex rel. Lantz v. Morris, 113 M 193, 197, 126 P 2d 1104.

#### Collateral References

Schools and School Districts 32-34. 78 C.J.S. Schools and School Districts §§ 35, 57. 47 Am. Jur. 304, Schools, §§ 12 et seq.

Discretion of administrative officers as to changing boundaries of school districts. 65 ALR 1523 and 135 ALR 1096.

Right of political division to challenge acts or proceedings by which its boundaries or limits are affected. 86 ALR 1367, 1376.

Unionization, centralization, or consolidation of school districts as affecting indebtedness and property of the individual districts. 121 ALR 826.

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75-1805. (1024) Creation of new districts out of other districts—change of boundaries. (1) A new school district may be created out of portions of one (1) or more existing school districts where the taxable valuation (the percentage valuation upon which levies are made and taxes computed) of property remaining in each district from which territory is taken is not reduced below seventy-five thousand dollars (\$75,000.00) and where the number of census children between the ages of six (6) and sixteen (16) years is not reduced below fifteen (15). For the purpose of organizing a new school district out of one (1) or more existing districts, a petition in writing shall be made to the county superintendent of schools, signed by parents or guardians of at least ten (10) census children between the ages of six (6) and sixteen (16) years, residing within the boundaries of the proposed new district, and residing at a greater distance than three (3) miles from any schoolhouse owned by any one of such school districts in which a school is maintained. The petition shall describe the boundaries of the proposed new district and give the names of all children of school age residing therein at the date of the presenting of said petition. The petition shall also show the taxable valuation (the percentage valuation upon which levies are made and taxes computed) of the property within the proposed new district which must not be less than seventy-five thousand dollars (\$75,000.00) as shown by the last completed assessment roll. Provided, however, that said provision as to the minimum remaining taxable valuation of each district from which territory is taken shall not apply in a case where such district has at least fifty thousand (50,000) acres of nontaxable Indian land remaining within its borders and provided, further, that said provision as to the minimum taxable valuation of such proposed new district shall not apply where such proposed district contains at least fifty thousand (50,-000) acres of nontaxable Indian land.

- The county superintendent shall within five (5) days from the receipt of such petition give notice of the hearing of said petition by posting or causing to be posted, a notice thereof at least ten (10) days prior to the time appointed by him for consideration of said petition, in at least three (3) of the most public places in the proposed new district and one (1) on each schoolhouse door of each district affected by the proposed change, or if there be no schoolhouse, then in one (1) of the most public places in each of said old districts; and shall on the day fixed in the notice proceed to hear said petition at the place designated in said notice, which must be either at the courthouse of the county or else at the schoolhouse in one of the school districts affected, unless a protest in writing signed by at least a majority of the school electors residing within such proposed school district shall be filed with the county superintendent of schools before or at the time fixed in the notice for the hearing of said petition, in which event the proposed school district shall not be created. If no such protest be filed, then the county superintendent, upon hearing the petition, shall within ten (10) days from the date of such hearing, make an order establishing the new district and describing the boundaries thereof, or make an order denying such petition.
- (3) An appeal may be taken to the board of county commissioners of the county, from either order made as aforesaid by three (3) resident tax-

payers of either the old or the new district who are dissatisfied with said order. Such appeal shall be taken within thirty (30) days of the date of such order and upon the hearing of said matter by the board of county commissioners, a decision shall be rendered which shall be final. The appeals mentioned in this section shall be in writing, subscribed by the parties taking the appeal and shall recite sufficient facts to show their rights to appeal hereunder, and that it is an appeal from the decision rendered, and such an appeal shall be filed with the county superintendent within thirty (30) days from the date of the order establishing such new district or denying such petition. The county superintendent shall, within twenty (20) days from the filing of such notice of appeal transmit to the board of county commissioners, and file in the office of the county clerk, the notice of appeal and all petitions, plats, and papers in his possession pertaining to the petition for the creation of such new school district.

- (4) The county clerk shall forthwith, upon receipt of such notice of appeal and other papers, give notice to all parties interested, by causing to be posted at least ten (10) days prior to the date of the next regular meeting of the board of county commissioners, in at least three (3) of the most public places in the proposed new district, and one (1) on each schoolhouse door of each district affected by the proposed change, or if there be no schoolhouse, then in one (1) of the most public places in each of said old districts, notices to the effect that the board of county commissioners will, at its office in the courthouse, upon a certain date, specifying the same in such notices, which date shall be during the next regular session of the board, finally hear and determine said appeal and said petition for the creation of such new district. The boundaries of any district can be changed in the following manner, to wit:
- (5) A majority of the resident taxpayers who are registered electors and whose names appear upon the last completed assessment roll for state, county and school district taxes, residing in territory which is a part of any organized school district may present a petition in writing to the county superintendent of schools, asking that such territory be transferred to, or included in, any other organized district to which said territory is contiguous, provided, however, that no territory within three (3) miles of an established school in such district shall be so transferred and provided further that the taxable valuation (the percentage valuation upon which levies are made and taxes computed) of property in the district from which territory is taken shall not be reduced to less than seventy-five thousand dollars (\$75,000.00); provided, however, that this latter provision shall not apply in cases where the remaining taxable valuation of the district from which the territory is taken contains at least fifty thousand (50,000) acres of nontaxable Indian land.
- (6) The petition shall describe the territory which it is proposed to transfer or include, and shall also state the reason for desiring such change, and the number of children of school age, if any, residing in the territory to be transferred or included.
- (7) The county superintendent shall file said petition in his office immediately on receipt thereof, and shall give notice to the parties inter-

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ested by posting notices at least ten (10) days prior to the time appointed for considering said petition, one (1) of which shall be in a public place in the territory which is proposed to be transferred or included, and one (1) on the door of each schoolhouse in each district affected by the change, or if there be no schoolhouse in such district, then in some public place in such district or districts, and at the time stated in said notice for the consideration of such petition, which shall not be less than ten (10) days nor more than thirty (30) days after the date of filing such petition, he shall proceed to hear such petition; and if he deem it advisable and for the best interest of the territory proposed to be transferred or included, he shall grant such petition and make an order fixing the boundaries of the district so changed, which order shall be final, unless an appeal be taken to the board of county commissioners of the county wherein such districts are located within thirty (30) days thereafter, and upon hearing thereof the decision of said board shall be final.

(8) All the papers, documents, and records in the case shall be certified by the county superintendent to the county commissioners for their determination of the matter on appeal; provided, that lands lying contiguous to a district and not attached to any district shall be attached to an adjacent district by the county superintendent of his own motion, and provided further, that all districts shall consist of contiguous territory.

History: Ap. p. Sec. 1751, Pol. C. 1895; re-en. Sec. 840, Rev. C. 1907; amd. Sec. 1, Ch. 82, L. 1911; amd. Sec. 404, Ch. 76, L. 1913; amd. Sec. 8, Ch. 196, L. 1919; re-en. Sec. 1024, R. C. M. 1921; amd. Sec. 1, Ch. 138, L. 1927; amd. Sec. 1, Ch. 175, L. 1933; amd. Sec. 1, Ch. 61, L. 1943; amd. Sec. 1, Ch. 232, L. 1955; amd. Sec. 1, Ch. 163, L. 1957.

## Appeals

When an appeal is taken to the board of county commissioners from the order and decision of the county superintendent of schools, the power and discretion to determine boundaries is vested in the board and upon hearing of the appeal the decision of the board is final. Read v. Stephens, 121 M 508, 193 P 2d 626, 629.

## Authority to Change Boundaries

Aside from the limitations expressed in this section the legislature has delegated to the county superintendent of schools and to the board of county commissioners a full measure of discretionary power in creating and changing the boundaries of school districts. Read v. Stephens, 121 M 508, 193 P 2d 626, 629.

#### County Commissioners' Power

This statute does not give the board of county commissioners power to act arbitrarily, or without a hearing, or in disregard of the evidence of matters which by the terms of the statute, it shall consider. Read v. Stephens, 121 M 508, 193 P 2d 626, 629.

Where the board of county commissioners exercises its power within the limits fixed by the statute, not arbitrarily or fraudulently, but within its sound discretion, the courts may not interfere. Read v. Stephens, 121 M 508, 193 P 2d 626, 629.

## De Facto Corporation

It would seem that where a school district attempted in good faith to annex another district under an existing law providing for annexation but mistakenly proceeded under a law permitting the extension of its boundaries by taking in part of another district, and the district thus created was acquiesced in by all concerned for more than five years, it was a corporation de facto and the legality of its existence was not open to collateral attack by resident taxpayers in an action to enjoin the sale of bonds issued by the district. Henderson v. School District No. 44, 75 M 154, 242 P 979, distinguished in 83 M 282, 291, 272 P 543.

#### Error in Description Not Fatal

Where petition for creation of a new school district contained errors in describing territory to be included, but only land actually intended was included, the misdescription did not invalidate the creation of the new district. State ex rel. School District No. 8 v. Lensman, 108 M 118, 125, 88 P 2d 63.

#### Hearing on Creation

While the term "hearing" would include the reception of testimony if any were offered, it is not indispensable in the creation of a joint school district by the county school superintendents where the facts are presented in some other competent manner, including, perhaps, personal knowledge of the superintendents; the loss of taxable valuation of property working to the disadvantage of one of the counties is up to the discretion and good judgment of those officers. State ex rel. School District No. 8 v. Lensman, 108 M 118, 126, 88 P 2d 63.

#### Indian Territory

Since by section 75-3708 (since repealed) it is contemplated that Indian lands shall be in a school district and Indian children counted in apportioning school moneys, it was the superintendent's mandatory duty to attach territory on an Indian reservation to an adjacent district or districts, no petition on the part of anyone being required as a condition precedent, under authority of the concluding sentence of this section. State ex rel. Lantz v. Morris, 113 M 193, 196, 126 P 2d 1104.

### Matters Considered

The board of county commissioners in determining whether certain territory should be transferred from one district to another can consider the financial condition of the districts, the means and convenience of communication therein, the number and places of residences of the children therein, their ages, and other matters that show the change to be advisable or otherwise and what is for the best interest of the territory proposed to be transferred. Read v. Stephens, 121 M 508, 193 P 2d 626, 629.

## Order Creating District

A new school district can be "created" only by a county superintendent of schools on compliance with the provisions of this section, not by the judgment of a district court entered in pursuance of a remittitur from the supreme court in a cause in which the matter of its creation was determined. Head v. Armstrong, 99 M 364, 369, 43 P 2d 243, explained in 108 M 118, 124, 88 P 2d 63.

### Petition—Contents

A petition for the creation of a new

school district under sections 75-1806 et seq., is not a pleading, the contents of which are subject to critical legal analysis to determine its sufficiency; but is sufficient to confer jurisdiction upon the board of school trustees if it clearly indicates the desire of a majority of the school electors residing in the proposed new district for segregation, and describes its boundaries. State ex rel. Hall v. Peterson, 55 M 355, 177 P 245.

Requirements of the statute as to what a petition for the creation of a new school district shall contain are jurisdictional; they must be made to appear in the petition or proven as matter of evidence; omission to do either is fatal. School District No. 28 v. Larson, 80 M 363, 369, 260 P 1042.

## Right of Appeal

Since under this section an order of the board of county commissioners in the matter of setting aside an order of the county superintendent of schools creating a school district, is final and no appeal lies to either school authorities or courts, equity will take jurisdiction of an action to right any wrong committed by the board. Grant v. Michaels, 94 M 452, 459, 23 P 2d 266.

Under this section read in connection with section 75-1814, an appeal lies from an order creating a joint school district to the boards of county commissioners of such counties, and the effect thereof is simply to suspend or delay the effective creation of the district, and not to vacate the order of creation; if, on appeal, opinion is equally divided between the boards of county commissioners, one board favoring creation and the other opposed thereto, the order of creation by the county school superintendents stands affirmed. State ex rel. School District No. 8 v. Lensman, 108 M 118, 88 P 2d 63.

## References

State ex rel. Pearl Assurance Co. Limited v. Holmes, 113 M 144, 150, 124 P 2d 700

#### Collateral References

Schools and School Districts 32, 34, 37 (1-5), 39.

37 (1-5), 39. 78 C.J.S. Schools and School Districts §§ 32, 34, 36, 49.

75-1806. (1026) Selection of trustees. When a new district is organized, such trustees of the old district as reside within the limits of the new one shall be trustees in the new district, and the county superintendent must appoint the remaining trustees for the new and old districts, who shall hold office until the next annual election.

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History: En. Sec. 405, Ch. 76, L. 1913; amd. Sec. 9, Ch. 196, L. 1919; re-en. Sec. 1026, R. C. M. 1921.

Collateral References

Schools and School Districts 40.
78 C.J.S. Schools and School Districts 48.

75-1807. (1027) Apportionment of moneys to new districts. No new district, organized as provided in section 75-1805, shall be entitled to any share of public money belonging to the old district until school has actually been taught one month in the new district; and unless within eight months from the order of the county superintendent granting such new district a school is opened, the action making a new district shall be void, and all elections or appointments of trustees or clerks made in consequence of such action, and all rights and office of parties so elected or appointed, shall cease and determine.

History: En. Sec. 405, Ch. 76, L. 1913; amd. Sec. 9, Ch. 196, L. 1919; re-en. Sec. 1027, R. C. M. 1921.

#### Collateral References

Schools and School Districts 41(3).
78 C.J.S. Schools and School Districts
74.

75-1808. (1028) Division of district funds and property. When a new district is formed from one or more old ones, the school funds remaining to the credit of the old district, after providing for all outstanding debts, except debts incurred for building and furnishing schoolhouses, shall be divided as follows: The basis for the division of the school fund shall be the school population, as shown by the last school census before the division of the district or districts occurred, and shall apply to such funds as remain to the credit of said old district or districts at the time of the organization of said new district, and said district shall receive funds in proportion to its per cent of census. In case of division, each district shall own and hold all permanent property, such as sites, schoolhouses, and furniture situated within its boundaries. All division of funds under this provision shall be made by the county superintendent, and when there are unpaid special taxes on the county tax book belonging to a district at the date of its division, the county treasurer, upon being notified of such division by the county superintendent, shall retain all moneys received in payment of such special tax until the same shall be apportioned by the county superintendent, whose duty shall be to apportion said money quarterly between the fractions of the divided district according to the location of the property on which said tax was levied. At the first apportionment after the organization of a new district, the county superintendent shall apportion to such district its per capita proportion of the general fund, but no money, either from the general or special fund, shall be paid out of the county treasury on account of such district, until a school shall have been taught therein one month; provided, that any new district shall be entitled to its apportionment, where the time that school was maintained in the old district before division, and in the new one after division, shall be equal to at least four months.

History: En. Sec. 405, Ch. 76, L. 1913; amd. Sec. 9, Ch. 196, L. 1919; re-en. Sec. 1028, R. C. M. 1921.

#### Division of Property

Upon creation of a new school district out of an old one a division of its property and funds should be made as of the date on which it was created, in accordance with the provisions of this section, each district holding and owning all permanent property, such as sites, school-houses and furniture situated within its boundaries. Head v. Armstrong, 99 M 364, 371, 43 P 2d 243.

#### Collateral References

Schools and School Districts \$2.41(1, 3). 78 C.J.S. Schools and School Districts \$76.

75-1809. (1029) Distribution of indebtedness. If, at the time such new district is created, there is any indebtedness against such old school district, then the county superintendent of the county in which such districts are located shall apportion such indebtedness between said districts, by first deducting from said indebtedness the amount of all moneys in the treasury belonging to the sinking fund of said old district, and then apportioning the remainder of the indebtedness between the respective districts in proportion to the value of the school property in the new district.

History: En. Sec. 405, Ch. 76, L. 1913; amd. Sec. 9, Ch. 196, L. 1919; re-en. Sec. 1029, R. C. M. 1921.

## Collateral References

Schools and School Districts 41(2). 78 C.J.S. Schools and School Districts 74.

75-1810. (1029.1) Indebtedness to remain against original territory upon creation of new school district. When a new school district shall be formed as provided in sections 75-1805 and 75-1813, the bonded indebtedness of any school district or portion of school district affected by such consolidation or change of boundaries, shall remain the indebtedness against the original territory against which such bonds were issued and shall be paid for out of levies made against said original territory.

History: En. Sec. 1, Ch. 163, L. 1933.

75-1811. (1030) Trustees to issue interest-bearing warrants. That upon the adjustment of such indebtedness, it shall be the duty of the board of trustees of such new district to cause to be made out, issued, and delivered to the trustees of such old district, warrants equal to the amount of such indebtedness apportioned to such new districts, which warrants, upon presentation, shall be endorsed by the treasurer of the county, "not paid for want of funds," and shall thereafter draw interest at the rate of six per cent per annum.

History: En. Sec. 405, Ch. 76, L. 1913; amd. Sec. 9, Ch. 196, L. 1919; re-en. Sec. 1030, R. C. M. 1921.

#### Collateral References

Schools and School Districts 41(2). 78 C.J.S. Schools and School Districts 74.

**75-1812.** (1031) County commissioners to levy tax for interest-bearing warrants. Until said warrants are paid, it shall be the duty of the board of county commissioners of said county to annually levy a tax upon the taxable property of such new school district sufficient to pay the interest on said warrants, and the money realized from the levy of such taxes shall be, by the county treasurer, kept in a special fund to be used solely for the purpose of paying the interest and principal of said warrants.

History: En. Sec. 405, Ch. 76, L. 1913; amd. Sec. 9, Ch. 196, L. 1919; re-en. Sec. 1031, R. C. M. 1921.

75-1813. (1034) Consolidated districts—procedure in event of consolidation—bonded debts. (1) Any two or more school districts lying in one

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county may be consolidated, either by the formation of a new district, or by the annexation of one or more districts to an existing district, as hereinafter provided.

When severally the boards of trustees of two (2) or more school districts, in regular meeting called for the publicly announced purpose of considering plans for consolidation of said two (2) or more districts and by majority vote of each board of trustees acting separately shall ask for district consolidation of each and all such petitioning boards, the county superintendent of schools having jurisdiction of such districts, within not less than twenty (20) nor more than thirty (30) days, shall cause a ten (10) days' posted notice to be given by the clerk in each district seeking election on such proposed consolidation of districts. Such notice is to be posted in three (3) public places in each such district and in one or more newspapers of the district or county, if there be such, giving the time and place or places specified in each notice to vote on the question of consolidation.

Consolidation of any two (2) or more school districts lying in one county may also be effected by the people of the districts concerned whenever a petition shall be directed to and received by the county superintendent of schools, and shall in each such district seeking consolidation be signed by not fewer than twenty per cent (20%) of the qualified electors in such district. The county superintendent shall within not less than twenty (20), nor more than thirty (30) days, cause a ten (10) days' posted notice to be given by the clerk in each district seeking election on such proposed consolidation of districts. Such notice is to be posted in three (3) public places in each such district, and in one or more newspapers of the district or county, if there be such, giving the time and place or places specified in each notice to vote on the question of consolidation.

- (2) The votes at such election shall be by ballot, which shall read "For consolidation" or "Against consolidation." The presiding officer at such election shall, within ten (10) days thereafter, certify the result of the vote to the county superintendent of the county in which the district lies.
- (3) If the majority of the votes cast in each district holding such election be for consolidation, it carries, and the superintendent, within ten (10) days thereafter, shall make proper orders to give effect to such vote, and shall thereafter transmit a copy thereof to the county clerk and recorder and to the clerk of each district affected. If the order be for the formation of a new district, it shall specify the name and number of such district, and the county superintendent shall appoint three (3) trustees to serve until the first Saturday in April succeeding.
- (4) At the regular election succeeding there shall be elected by the regularly qualified electors three (3) trustees, one of whom shall serve for one (1) year, one for two (2) years, and one for three (3) years. The election of trustees and terms shall be the same as for other districts under the general school laws.
- (5) When, in the interest of reducing cost of operation or improving the school service for pupils, a board of trustees, of a third class district, shall by majority vote of its members or at the request of twenty per cent (20%) of the qualified electors of the districts indicated by a petition, ask the county superintendent of schools to annex the territory and property

of such third class district to any second or first class district in its entirety, or proportionately to any number of first or second class districts as the board resolution or petition requests, the county superintendent shall, upon an approving vote of the trustees of the district with which the annexation is sought, authorize an election on such annexation within not less than twenty (20) nor more than thirty (30) days. Notice of such election shall be given in the same manner and the same general plan for balloting shall be utilized on the question of district annexation by the electors of the petitioning district or districts as the case may be that is hereby authorized for district consolidation.

- (6) The ballot shall in this case be "For annexation" and "Against annexation." Should the action of the boards of trustees approving the plan of annexation be approved by majority vote of electors of the district or districts seeking election on the issue then the consolidation sought shall be effected by the county superintendent of schools within ten (10) days after such election. In the event of a disapproving vote by majority of votes cast by either of such voting districts, the proposed annexation shall fail.
- (7) In case of annexation of any district or districts to any existing district, as herein provided, the proper officers of the annexed districts, within ten (10) days from the receipt of a copy of such order, shall turn over to the proper officers of the district to which they are annexed, all records, funds, and effects of such annexed district. In case of the formation of a new district, the proper officers of the discontinued districts in like manner, within ten (10) days after the organization of the new district, shall turn over the records, funds, and effects of such old districts to the proper officers of the new districts.
- (8) In case of consolidation of districts by annexation, the title to schoolhouses and sites of the separate districts shall vest in the new consolidated district. The officers of the first or second class district involved shall continue to hold office under the consolidated district until the end of the terms for which they were duly elected and their successors shall be regularly elected as provided by law.

Consolidated school districts shall be governed by the general school laws of the state.

(9) Bonded indebtedness of any district merged by consolidation or annexation shall remain the indebtedness and obligation of the district which originally incurred such bonded indebtedness and be paid by levies imposed upon property therein.

History: En. Sec. 407, Ch. 76, L. 1913; re-en. Sec. 1034, R. C. M. 1921; amd. Sec. 1, Ch. 201, L. 1943; amd. Sec. 1, Ch. 32, L. 1951; amd. Sec. 1, Ch. 23, L. 1953. Cal. Pol. C. Sec. 1577.

#### Abandonment of District

An order of a county superintendent of schools for the abandonment of a school district, was not void for want of jurisdiction because of no attempt at compliance with this section, since this section has nothing to do with the abandonment of a

school district under section 75-1522 and is not dependent upon any question of whether school was held within either or any of the districts in question; if there be any conflict, section 75-1522 controls in point of time. State ex rel. McDonnell v. Musburger, 111 M 579, 582, 111 P 2d 1038.

#### References

Henderson v. School District No. 44, 75 M 154, 160, 242 P 979; Waddell v. School District No. 3, 79 M 432, 441, 257 P 278.

#### Collateral References

Schools and School Districts \$\sim 33, 37(3, 4), 38, 40, 41(1).

78 C.J.S. Schools and School Districts

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Unionization, centralization, or consolidation of school districts as affecting indebtedness and property of the individual districts. 121 ALR 826.

#### DECISIONS UNDER FORMER LAW

#### Provisions Jurisdictional

The provision of this section requiring the filing of a petition by a majority of the resident freeholders in a school district that the district be consolidated with another district is jurisdictional and not merely directory, and where the petition is not signed by a majority, an election to determine the question may not be called. The county superintendent must search all the records of the county, i.e., those in the offices of the assessor, clerk and recorder and clerk of the district court, to determine whether the petition contains signatures of a majority. State ex rel. Wilson v. Musburger, 114 M 175, 178, 133 P 2d

586. (Decided under statute prior to 1943 amendment.)

## Time for Posting Notices

This section, which requires a county superintendent of schools upon receipt of a petition for a consolidation of school districts, within ten days "to cause a ten days posted notice" to be given of the election means that the superintendent has ten days within which to act voluntarily, and is not a limitation on the time within which the election notices may be posted. Swaim v. Redeen, 101 M 521, 529, 55 P 2d 1. (Decided under statute prior to 1943 amendment.)

75-1814. (1035) Joint districts — formation, control, discontinuance. Joint districts (districts lying partly in one county and partly in another) may be formed in the same manner as other new districts are formed, except that the petition herein provided for must be made to the county superintendent of each county affected; but in the case of joint districts, all of the provisions herein enumerated for the formation of a new district must be by concurrent action of the superintendent of each county affected.

History: En. Sec. 408, Ch. 76, L. 1913; re-en. Sec. 1035, R. C. M. 1921. Cal. Pol. C. Sec. 1577.

## Appeal To County Commissioners

Under this section read in connection with section 75-1805, an appeal lies from an order creating a joint school district to the boards of county commissioners of such counties, and the effect thereof is simply to suspend or delay the effective creation of the district, and not to vacate the order of creation; if, on appeal, opinion is equally divided between the boards of county commissioners, one board favoring creation and the other opposed thereto, the order of creation by the county school superintendents stands affirmed. State ex rel. School District No. 8 v. Lensman, 108 M 118, 88 P 2d 63.

#### Compliance with Other Sections

This section declares that joint school districts may be formed as other districts are formed, thus referring to some provisions of either section 75-1805, or section 1025, R. C. M. 1921 (since repealed), the only sections referring to the subject. Section 75-1805 requires, inter alia, that a petition for the creation of a district must be signed by parents of children residing at a greater distance than two miles from a schoolhouse in which school is main-

tained. Section 1025 (since repealed) says that a petition for the creation of a district out of a portion of an existing one must be presented to the board of trustees of the parent district. A petition for the creation of a joint district wholly from the territory of an existing district, if drawn under 75-1805, was fatally defective in failing to set forth that the signers resided at a greater distance than two miles from a schoolhouse in which school was being maintained; and if formulated under 1025 (since repealed), the procedure in presenting it to the superintendents of the two counties in which the new district partly lay, instead of the board of trustees of the district out of which the new one was to be formed, did not confer jurisdiction on the superintendents to act; in either event the district court properly held that the order creating the district was void for want of jurisdiction in the superintendents to act. School District No. 28 v. Larson, 80 M 363, 370, 260 P 1042.

#### Creation of New County

Where, upon the creation of a new county, the territory embraced within a school district for many years existent in one of the two old counties out of which the new one was created, was cut in two, causing it to lie partly in the old, and the county commissioners charged with the

duty of dividing the new county into school districts did not properly perform it but left the boundaries of the district in question as they were before the creation of the new county, the district ipsofacto became a joint one, and therefore refusal of the county treasurer of the old county in which a portion of the district lay to transmit to the treasurer of the new county the funds collected by him as taxes upon the property within that portion for school purposes, was wrongful. State ex rel. School District No. 28 v. Urton, 76 M 458, 464, 248 P 369.

#### Mode of Procedure

Under this section, the procedure of creating joint school districts is not fully or clearly provided, and it becomes the duty of the officers empowered to create

such districts, to adopt any mode of procedure reasonably suitable to carry the legislative intention into effect. State ex rel. School District No. 8 v. Lensman, 108 M 118, 128, 88 P 2d 63.

#### References

State ex rel. Redman v. Meyers, 65 M 124, 129, 210 P 1064.

#### Collateral References

Schools and School Districts € 33. 78 C.J.S. Schools and School Districts § 57.

Unionization, centralization, or consolidation of school districts as affecting indebtedness and property of individual districts. 121 ALR 826.

75-1815. (1036) Joint districts—apportionment of school money. The trustees and teachers of joint districts must make to the superintendent of each county in which the district is located the reports which other trustees and teachers are required to make, and also the number of pupils attending the school from each county, and all other acts which from their nature should be separately kept and done, as if each portion of said joint district belonging to each county were an entire district in the respective counties. The teachers of such joint district, in compliance with the provisions of section 75-2519, shall record their teaching certificates with the superintendent of the county in which the schoolhouse is located.

History: En. Sec. 1755, Pol. C. 1895; re-en. Sec. 844, Rev. C. 1907; re-en. Sec. 408, Ch. 76, L. 1913; re-en. Sec. 1036, R. C. M. 1921; amd. Sec. 2, Ch. 151, L. 1961.

## Collateral References

Schools and School Districts 219(3). 78 C.J.S. Schools and School Districts

75-1816. (1036.1) Determination of levy in joint school districts. The board of school trustees of each joint school district shall consider, prepare and adopt a preliminary budget according to the provisions of section 75-1706, provided that a copy of such budget shall be transmitted to the county superintendent of schools of each county in which any part of such joint school district is situated. The county superintendents of all such counties must, either by correspondence, meetings, or in some other manner, ascertain and determine the number of mills which should be levied in such joint school district for each fund for which a levy is to be made. After ascertaining and determining the number of mills which should be levied for each such fund, in the manner herein provided, all such county superintendents of schools shall make and sign a joint statement, addressed to the board of county commissioners of each county in which a part of the joint school district is situated, setting forth the number of mills which should be levied for each fund, as so ascertained and determined by such county superintendents, by the boards of county commissioners of such counties, and shall deliver or transmit one copy of such statement to each such board of county commissioners not later than the Saturday immediately preceding the second Monday in August.

The number of mills to be levied on all of the property of such joint district for each tax-supported fund shall be determined in accordance with the general laws pertaining to tax levies for school districts, provided that the following exceptions to general financing procedures shall be made:

- In the general fund budget and solely for the purpose of determining the amounts of county equalization aid to be allocated to the joint district for its foundation program, the total foundation program amount of the joint district shall be considered as consisting of as many separate foundation programs as there are counties in which any portion of the joint district is situated. The amount of each such separate foundation program shall bear to the total amount of the foundation program the same relationship that the number of ANB pupils in the joint district residing in each such county bears to the total ANB of the joint district. To the requirements of each such separate foundation program shall be applied the estimated state interest and income payment based on the number of census pupils in such portion, plus the estimated revenue to be derived from a levy of five mills on the dollar of the taxable value of the property in such portion. The amount of county equalization aid to be allocated to such separate foundation program shall then be determined in accordance with the provisions of section 75-3618. Following the determination of the amount of county equalization aid from each county in which any portion of the joint district is situated, the total remaining requirements of the general fund budget shall be financed in accordance with the general laws, provided that, to receive state equalization aid, such joint district must apply to its foundation program all district revenue from the state permanent school fund and a district-wide five-mill levy.
- (b) In the transportation fund budget and solely for the purpose of apportioning among the counties wherein any portion of the joint district is situated the amount of county reimbursement for elementary transportation to be allocated to the joint district, the obligation for the total amount of such county reimbursement shall be distributed among such counties in the same proportion as the ANB of the joint district is distributed by residence in each such county.

History: En. Sec. 1, Ch. 105, L. 1925; amd. Sec. 2, Ch. 182, L. 1951; amd. Sec. 3, Ch. 151, L. 1961.

#### Collateral References

Schools and School Districts 103(4). 79 C.J.S. Schools and School Districts 383.

47 Am. Jur. 352, Schools, § 76.

Right of school district, or school authorities, to rescind or modify a vote or resolution for a bond issue or tax. 68 ALR 2d 1041.

75-1817. (1036.2) Levy of tax in joint school districts. At the time of fixing the tax levies for county and school purposes the board of county commissioners of each county in which any part of the joint school district is situated, shall fix the tax levy for each fund for such joint school district at the number of mills for each such levy recommended by such superintendent of schools in such joint statement.

History: En. Sec. 2, Ch. 105, L. 1925; amd. Sec. 3, Ch. 182, L. 1951.

**75-1818.** (1037.1) **Dissolution of joint school districts.** A joint school district may be dissolved in the following manner:

Whenever the majority of the qualified electors residing in that portion of a joint district situated in one county presents a petition to the county superintendent of schools of the same county praying for a dissolution of the district and setting forth briefly the reason therefor, such county superintendent shall immediately give notice thereof to all other county superintendents of counties contributing territory to the joint district, and shall within twenty (20) days from the date of the receipt of such petition call an election and fix a date for the holding of same, and shall notify the clerk of the district to post three notices in the territory of each county composing the district. Notices must be posted in the most conspicuous places in the territory and must be posted at least fifteen days preceding the election. Such notices must specify the purpose and the date and hour when the polls will be opened and the place at which the election will be held. Separate elections must be held in each portion of the district lying in different counties on the same date and hour and be conducted in the same manner as general school elections. Each county superintendent of schools must appoint three judges of election for the territory in his or her county and the result of the election must be certified by the judges to their respective county superintendents. The county superintendents shall meet within five days after the election and determine the total vote cast throughout the district. If a majority of all votes cast in the district are for dissolution, the district must be dissolved; or in the event that two-thirds  $(\frac{2}{3})$  of the votes cast in the territory of any county favor dissolution the district may be dissolved as to such territory; provided both superintendents of the counties affected are agreed that such dissolution will not entail an undue hardship to either part of such joint district, and that there is no good and sufficient reason why such dissolution should not be made. In case of the failure of a two-thirds (2/3) majority in any portion of the district, as herein provided, or a failure of the majority of the entire district to vote for dissolution, the district shall not be dissolved and no election thereon can be held within three (3) years thereafter. If dissolution carries it shall take effect at the end of the current school year.

History: En. Sec. 1, Ch. 115, L. 1927.

## Collateral References

Schools and School Districts 44. 78 C.J.S. Schools and School Districts 59 et seq.

75-1819. Abandonment of joint school district, for what reasons—procedure—disposal of territory. (1) A joint school district may be ordered abandoned for any of the reasons set forth in section 75-1522, providing for the abandonment of school districts; or whenever the taxable valuation of the property situated in the portion of the joint district in any county shall be of so little value as not to justify the continuation of the joint district. The county superintendent of schools in determining the question of abandoning any joint district under this section by reason of terms of school not having been held therein, must include any period of time that may have elapsed before the approval of this act, and all of the provisions of said sec-

tion 75-1522, in so far as the same may be applicable and not in conflict with the provisions of this act, shall apply to the abandonment of joint school districts.

The county superintendent of the county in which the schoolhouse or houses of the joint districts are situated, or performing the duties with regard to the budget of such joint district under the provisions of section 75-1728, shall be the county superintendent, who must order the abandonment of a joint school district. When the county superintendent orders a joint district abandoned, written notice must be immediately given to the county superintendent of the other county or counties in which territory of the district ordered abandoned is situated, and each county superintendent must attach the territory of the abandoned district or districts within his or her respective county to some adjoining district or districts; provided that if the part of the territory of the joint district, situated in any one of the counties forming the original joint district has a taxable value of seventy-five thousand dollars (\$75,000,00) or more, the county superintendent of the county, in which the said territory is located, having the above said taxable value, may if the district is not subject to abandonment for failure to hold terms of school as provided in said section 75-1522, continue this same territory as a school district of such county.

(2) The county superintendents of the counties in which the territory of the abandoned joint district is situated must, within thirty (30) days after the date of the order of abandonment, meet and adjust and apportion the indebtedness, funds and property of the abandoned joint district, and furnish the county treasurer of each such county with a copy of the adjustment and apportionment agreement, in the same manner as provided by sections 75-1822 and 75-1823, when joint school districts are dissolved, and if intercounty property subject to assessment by the state board of equalization is within the boundaries of such abandoned joint district, each county superintendent shall give the state board of equalization written notice of the district or districts, within their respective counties, to which any part of the territory of the abandoned joint district has been attached. If no school is being held in the joint district on the date the order is made for its abandonment such abandonment shall take effect immediately, otherwise it shall not take effect until the 30th day of June following.

History: En. Sec. 1, Ch. 47, L. 1945.

75-1820. (1037.2) Declaration of validity of school districts created out of joint districts. Any school district heretofore created out of a joint district without the concurrent action of the various county superintendents and boards of county commissioners of the various counties having territory within the district, or where all the requirements of the statutes have not been fully complied with and such district has functioned for a period of two (2) years or more, is hereby declared to be a valid subsisting school district.

History: En. Sec. 2, Ch. 115, L. 1927.

## Concurrent or Joint Action

Boards of county commissioners, when acting on an appeal from an order creating

a joint school district, need not act concurrently, each board sitting separately, and not jointly as in the instant case, since, under the facts appearing, the result would have been precisely the same whether the boards met concurrently, jointly or in any other manner, and respondents in a mandamus proceeding, not being injured, may not complain. State ex rel. School District No. 8 v. Lensman, 108 M 118, 128, 88 P 2d 63.

#### Collateral References

Schools and School Districts 40.
78 C.J.S. Schools and School Districts 48.

75-1821. (1037.3) Limitation on creation of new school districts. In case of the dissolution of any joint school district as herein provided the territory shall be immediately formed into a new district or attached to an existing district by the county superintendent of schools, provided that no new district shall be created where the assessed valuation is less than \$75,000.00 and where fewer than ten census children reside within the territory.

History: En. Sec. 3, Ch. 115, L. 1927.

#### Collateral References

Schools and School Districts 44.
78 C.J.S. Schools and School Districts
59 et seq.

75-1822. (1037.4) Apportionment of funds and property on dissolution of joint school districts—indebtedness. Where a joint district has been dissolved as herein provided the various county superintendents shall meet and adjust the indebtedness and apportion the funds and property upon the following basis:

First. Indebtedness created on account of permanent school property acquired shall be divided after deducting all sinking funds in proportion to the value of school property situated in each portion of the district.

Second. Indebtedness incurred for current expenses of schools, whether represented by bonds or warrants, shall be apportioned upon the basis of the assessed valuation of the various portions of the district as determined by the last completed assessment preceding the election, after deducting from warrant indebtedness all moneys in the general fund of the district.

Third. District funds remaining to the credit of the district in the various counties shall be apportioned on the basis of the census children of the district as shown by the last school census.

History: En. Sec. 4, Ch. 115, L. 1927.

75-1823. (1037.5) Copy of adjustment agreement to be furnished treasurer—notice to board of equalization of change of boundaries, when. Each county superintendent shall furnish the county treasurer of his or her county with a copy of the adjustment as agreed upon by them and the county treasurer shall make any remittances necessary to carry out the adjustment. Where a change in boundary lines has affected intercounty property subject to assessment by the state board of equalization, the county superintendent of schools shall also notify the state board of equalization of such change of boundaries.

History: En. Sec. 5, Ch. 115, L. 1927.

75-1824. (1039) Repealed—Chapter 199, Laws of 1949.

## Repeal

This section (Sec. 608, Ch. 76, L. 1913; Sec. 17, Ch. 196, L. 1919), relating to the maintenance of schools in isolated sec-

tions, was repealed as Sec. 1039, Revised Codes, 1935, by Sec. 24, Ch. 199, Laws 1949, effective June 1, 1949. For present provisions, see sec. 75-3617.

75-1825 SCHOOLS

75-1825. (1039.1) Acceptance of gifts and legacies authorized—endowment fund. All school districts and boards of trustees thereof on behalf of such districts are hereby authorized and empowered to accept gifts, legacies and devises, subject to the conditions imposed by the deed of the donor, or will of the testator, or without any conditions imposed. Any school district in the state may, by resolution of the board of trustees of such school district, establish a special fund to be known as "endowment fund."

History: En. Sec. 1, Ch. 4, L. 1923.

Collateral References
Schools and School Districts
17.

78 C.J.S. Schools and School Districts
17.

47 Am. Jur., Schools, p. 358, § 85; p. 360, § 89 et seq.

75-1826. (1039.2) Composition of endowment fund. The "endowment fund" shall consist of all donations by gift, devise, or bequest, not otherwise specified by the donor, devisor, or testator, in the deed of gift, or devise of any will or testament.

History: En. Sec. 2, Ch. 4, L. 1923.

75-1827. (1039.3) Use and investment of endowment fund—disposal of fund of abandoned districts. The endowment fund, when established, shall be kept sacred to the children of the district, and shall be invested in such securities as will guard the same from loss, and only the income therefrom may be appropriated for any purpose; the income from the fund shall be added to the principal and reinvested, until the fund shall have reached the total sum of fifty thousand (\$50,000.00) dollars in districts of the first class, the sum of twenty thousand (\$20,000.00) dollars in districts of the second class, and the sum of ten thousand (\$10,000.00) dollars in districts of the third class; when the said fund in any district shall have reached the said sum according to its class, the income from the fund may be appropriated for school purposes in the district, or may be added to the principal fund and reinvested the same as the principal.

Whenever any school district has been abandoned, and the territory comprising the same has been attached to a contiguous district, the endowment fund of such abandoned district shall be transferred and placed in the endowment fund in the district to which such territory is attached.

History: En. Sec. 3, Ch. 4, L. 1923.

Collateral References

Schools and School Districts € 18, 44. 78 C.J.S. Schools and School Districts § 20, 59 et seq.

75-1828. (1039.4) County treasurer to be custodian of endowment fund—investment—restriction. The county treasurer shall be custodian of the endowment funds of school districts, and shall, with the consent and approval of the board of trustees of such district, invest the same in school district bonds of the district, or in bonds of other school districts within the state, when possible to do so, and when such funds cannot be invested in such school district bonds, temporary investments of small amounts of such funds may be made in the securities of national or state banks, and the bonds of such banks given to counties, for the protection of county funds, shall be held liable for the payment of any such temporary investment of such endowment fund. No portion of any such fund shall be loaned to the

school district to which the same shall belong, nor shall any such fund be invested in the warrants of such district.

History: En. Sec. 4, Ch. 4, L. 1923.

75-1829. (1039.5) Separation of endowment fund from other funds—liability of treasurer—reports. The county treasurer shall keep the endowment fund of each school district separate and distinct from all other funds of the district, and shall keep a separate account of same, and shall keep the securities in which such fund is invested separate from all other securities held by him, and separate from the securities of other school district endowment funds in his custody. He shall be liable on his official bond for the endowment funds of school districts in his custody, and he shall, on or before the first day of July of each year, account to the trustees of each school district in the county having an endowment fund, showing the condition thereof and the securities in which the same is invested, and the income received therefrom during the year. He shall also include said funds in his reports to the board of county commissioners.

History: En. Sec. 5, Ch. 4, L. 1923.

75-1830. (1039.6) Memorials for donors to be provided. The board of trustees of any school district having an endowment fund shall provide suitable memorials for all persons or associations of persons making gifts to the school district which will by the provisions hereof become a part of the endowment fund of the district.

History: En. Sec. 6, Ch. 4, L. 1923.

(1039.7) Examination of school district books—accounting methods to be prescribed—reports. It shall be the duty of the county auditor in all counties having an auditor, and the county treasurer in all counties not having an auditor, to prescribe the method of keeping the books in school districts of the third class not maintaining a high school in their respective counties, and to make an examination of the books of such third class school districts at least once every year, and whenever directed so to do by the board of county commissioners, or requested by the board of trustees of such school districts. It shall be the duty of the clerk of districts of the third class not maintaining a high school of each of the several counties of the state to deliver to the county auditor or treasurer, as in this act provided, between the fifteenth day of June and the fifteenth day of July of each year, all books, vouchers, claims, and other papers pertaining to his office, and take a receipt therefor, and all such books, youchers, claims and papers shall be examined by said auditor or treasurer and returned to the several clerks, not later than August fifteenth of each year.

Upon the completion of the examination provided for in this act, the auditor or treasurer, as the case may be, shall report the result of his examination by sending to the chairman of each board of trustees a written report of such examination and file a copy of each such report in the office of the county superintendent of schools.

History: En. Sec. 1, Ch. 34, L. 1923; amd. Sec. 1, Ch. 93, L. 1955.

Cross-Reference

Examination of books and accounts, sec. 82-1008.

75-1832 SCHOOLS

75-1832. (1039.8) Failure to properly keep books—penalty—county attorney to prosecute—costs of action. It shall be the duty of the board of trustees and the clerk of all school districts of the third class to keep the books of such district in the manner prescribed by the county auditor or county treasurer, as the case may be, and failure or refusal to do [so] shall constitute grounds for the removal from office of such trustee or trustees or clerk, and the costs of such removal shall be entered as a judgment against the officer so removed and be collected as other judgments on execution issued therefor. The county attorney shall prosecute all proceedings for removal of such officers, or the parties seeking such removal may employ private counsel, but in either case the parties commencing the proceedings shall be liable for the costs thereof upon a failure to sustain the charge, which costs shall be entered as a judgment against the parties and collected on execution issued therefor.

History: En. Sec. 2, Ch. 34, L. 1923.

## Compiler's Note

The bracketed word "so" was inserted by the compiler.

## Collateral References

Schools and School Districts 53(5), 92(3).

78 C.J.S. Schools and School Districts § 116; 79 C.J.S. Schools and School Districts § 345.

75-1833. (1039.9) Filing report of result of examination of school district books. The examining officer provided for in this act shall file a report setting forth in detail the result of any examination so conducted by him under the provisions hereof, in the office of the county clerk and recorder of the proper county.

History: En. Sec. 3, Ch. 34, L. 1923.

75-1834. (1039.10) County commissioners to furnish blanks and forms. The county commissioners of each county shall furnish to each school district all the necessary books and blanks for carrying out the provisions of this act.

History: En. Sec. 4, Ch. 34, L. 1923.

## CHAPTER 19

## CLERKS OF SCHOOL DISTRICTS—SCHOOL CENSUS

Section 75-1901. Clerk-duties of.

75-1902. Same—accounts of expenditures.

75-1903. School census—how made—liability for failure or neglect.

75-1904. Checking census reports—maintaining files—census of handicapped.

75-1905. Report of expenditures.

**75-1901.** (1049) **Clerk—duties of.** The duties of the district clerk shall be as follows:

To attend all meetings of the board of trustees; but if he shall not be present, the board of trustees shall select one of their number as clerk, who shall certify the proceedings of the meeting to the clerk of the district to be recorded by him. He shall keep his record in a book to be furnished by the board of trustees, and he shall preserve a copy of all reports made to the county superintendent, and safely preserve and keep all books and documents belonging to his office, and shall turn the same over to his successors.

History: Ap. p. Sec. 1830, Pol. C. 1895; amd. Sec. 6, p. 131, L. 1897; re-en. Sec. 899, Rev. C. 1907; amd. Sec. 1, Ch. 102, L. 1911; amd. Sec. 512, Ch. 76, L. 1913; re-en. Sec. 1049, R. C. M. 1921. Cal. Pol. C. Sec. 1650.

#### Acting Clerk of Board of Trustees

Title to office may not be tried in a proceeding to which the incumbent is not a party, and where one is at least a de facto officer, his acts, done by color of office, are proof against collateral attack; hence where a member of a school board was acting as its clerk at the time of the letting of a contract, the contention of defendant district in an action to recover thereon, that under section 75-1621, he

could not act as such, need not be passed upon on appeal from a judgment of nonsuit. Mintener Lumber Co. v. School District No. 56, 84 M 461, 469, 277 P 9.

## Presentation of Claims

The presentation of a claim to a clerk of a district is nugatory, and his assurance that the same would be paid does not bind the board. Kenyon-Noble Lumber Co. v. School District No. 4, 40 M 123, 129, 105 P 551.

#### Collateral References

Schools and School Districts €20, 63 (3).

78 C.J.S. Schools and School Districts §§ 83, 127.

75-1902. (1050) Same—accounts of expenditures. To keep accurate and detailed accounts of all receipts and expenditures of school moneys. At each annual school meeting the district clerk shall present his record-book for public inspection, and shall make a statement of the financial condition of the district and the action of the trustees, and such record must always be open for public inspection.

History: Ap. p. Sec. 1830, Pol. C. 1895; amd. Sec. 6, p. 131, L. 1897; re-en. Sec. 899, Rev. C. 1907; amd. Sec. 1, Ch. 102, L. 1911;

amd. Sec. 512, Ch. 76, L. 1913; re-en. Sec. 1050, R. C. M. 1921. Cal. Pol. C. Sec. 1650.

(1051) School census—how made—liability for failure or neg-**75-1903**. The clerk of the school district shall make annually between the 15th day of September and the 15th day of October of each year an exact census of all children and youths between the ages of six and twenty-one years residing in the district. The term "residing" as used in this section shall be defined in such a way as to include (1) children residing with their parents or guardians in such district, (2) children temporarily residing outside of such district for the purpose of attending any public or private school or any institution of higher learning, other than custodial or training institutions operated and financed by the state of Montana, providing that parents of resident children of any district must be residing in the district on the first day of October and provided further that the resident children themselves must have been actual residents of the district immediately previous to such outside residence, (3) married persons under twenty-one years of age residing in the district, regardless of the residence of their parents, (4) children residing in private institutions located in the district that exist primarily not for educational purposes but for the rehabilitation, psychiatric or general medical care, correction, or general welfare of youth, and which institutions incidentally may or may not also provide education for the children residing in said institution, (5) any other children who are residents of such district and who are not specifically excluded hereinafter. The term "residing" is further defined in such a way as to exclude (1) children temporarily visiting in or passing through such district, (2) children who have never actually resided within the district, even though their parents or guardians shall reside within the district, (3) children who are residing within the district for the purpose of attending

any public school, or any private school or institution which exists only for the purpose of providing elementary, secondary or higher education, (4) all children who may properly be included in the census of some other district, (5) unmarried persons between six and twenty-one years of age residing in the district who are not regularly enrolled in any public or private school or institution which exists only for the purpose of providing elementary, secondary, or higher education and whose parents do not reside in the district as of the first day of October. He shall take specifically and separately a census of all children under the age of six years in the manner aforesaid.

- (b) The census of the clerk shall be made in alphabetical form upon blanks to be furnished by the county superintendent of schools and shall show the following facts:
- 1. The full name of all children less than twenty-one years of age and residing in the district on the first day of October. Such names shall be given by families under the name of the parents or guardian.
- 2. The Christian and surnames of both parents or guardian including initials of all middle names together with the place of residence of said parents or guardian specified by street and number if living in city or town, or if living in any other than a city or town the post-office address of such parents or guardian must be given. The year, month, and day on which each child was born and the age in years, counting the first day of October, and sex.
- 3. Such other facts as the superintendent of public instruction may require.
- (e) He shall make under oath two full reports on blanks furnished for the purpose to the county superintendent of schools within fifteen days after the completion of the census and a copy of said report shall be delivered to the school trustees. Failure to make such report as specified, or the inclusion in such report of names of children which are fictitious or names of children which are not residents of the district shall constitute a misdemeanor and shall be punishable by a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00). For taking the census the district clerk shall be paid by the board of trustees from the county school money to the credit of the district in the same manner as other contingent expenses are paid at a rate not exceeding ten cents for each child's name returned by him. The clerk shall not be paid for taking the census until after the list has been checked by the county superintendent, as hereinafter provided, and the correct number of children reported to the school trustees. He shall receive such other compensation for other services as may be allowed by the board of trustees. In case any district clerk shall fail to take the census as provided in this act or shall fail to take a proper and accurate census at the proper time and if through such neglect the district fails to receive its apportionment of school money, such school clerk shall be individually liable to the district for the full amount so lost and it may be recovered on a suit by any citizen of such district in the name and for the benefit of such district.

History: Ap. p. Sec. 28, p. 626, Cod. re-en. Sec. 1114, 5th Div. Rev. Stat. 1879; Stat. 1871; re-en. Sec. 27, p. 127, L. 1874; re-en. Sec. 1886, 5th Div. Comp. Stat.

1887; re-en. Sec. 1830, Pol. C. 1895; amd. Sec. 6, p. 131, L. 1897; amd. Sec. 5, p. 122, L. 1901; amd. Sec. 1, Ch. 97, L. 1907; re-en. Sec. 899, Rev. C. 1907; amd. Sec. 1, Ch. 102, L. 1911; amd. Sec. 512, Ch. 76, L. 1913; amd. Sec. 14, Ch. 196, L. 1919; re-en. Sec. 1051, R. C. M. 1921; amd. Sec. 1, Ch. 118, L. 1927; amd. Sec. 1, Ch. 86, L. 1961.

#### Census as Evidence

A school census kept as required by law is a public record, and admissible in evidence as prima-facie evidence of the facts therein stated. State v. Vinn, 50 M 27, 39, 144 P 773.

#### Residence of Children

The exact census which the clerk is required to take, must be precisely accurate, and cannot include any person whose legal residence is elsewhere. School District No. 7 v. Peterson, 10 M 17, 24 P 698. See also State ex rel. Johnson v. Kassing, 74 M 25, 28, 238 P 582.

#### References

O'Brien v. School District No. 1, 68 M 432, 435, 219 P 1113.

75-1904. (1051.1) Checking census reports—maintaining files—census of handicapped. It shall be the duty of the county superintendent of schools upon receipt of the report as provided in section 75-1903 to carefully examine the same and check it for errors or duplications with other census reports filed by other clerks of school districts of his county. For the purpose of assisting him in checking duplication in such reports, he shall make an alphabetical card index, classified by families, showing the names of all children on the school census, which index shall be kept current according to the census reports turned in to him each year. If the name of the same person be found upon more than one report or if the report contains names which are fictitious or names which properly belong in some other school district, he shall strike out such fictitious names and all duplicate names from all lists except that of the district in which such person was residing in good faith on the first day of October. If the county superintendent should find upon any census list the names of any persons who he believes were not residents in good faith in such district as aforesaid or which he believes are fictitious, he shall notify the clerk of the particular school district and if said clerk shall not establish the correctness of the list within fifteen (15) days after such notification, such names shall be stricken from the list. At the time of taking the annual census the clerk shall use reasonable diligence to ascertain the names of all handicapped children in the district and such information concerning the same as is required by the state superintendent of public instruction.

History: En. Sec. 2, Ch. 118, L. 1927; amd. Sec. 1, Ch. 140, L. 1955.

#### Collateral References

Schools and School Districts 48(6). 78 C.J.S. Schools and School Districts 99 et seq.

75-1905. (1052) Report of expenditures. The clerk of the school district shall make annually, between the first and twentieth day of July of each year, an exact detailed and itemized statement of all moneys expended by, or in behalf of the school district, which statement shall show all receipts and disbursements made on behalf of the school district from July first of the preceding year to July first of the current year. In districts where the annual expenditures are less than five thousand dollars (\$5,000.00) per annum, the clerk shall prepare and file with the board a detailed and itemized statement of all moneys expended, showing the num-

ber of warrants, together with the date thereon, to whom such warrant was paid, the amount of such warrant, and the purpose for which such warrant was drawn, and shall post a copy of such statement in three (3) conspicuous places in the district, one (1) of which shall be on the schoolhouse of the district, and in all districts disbursing annual amounts exceeding five thousand dollars (\$5,000.00), he shall file with the county superintendent a copy of said statement not later than the first week in August, or he shall with the approval of the board of trustees, cause the books to be audited by either the state examiner's office or by a public accountant approved by the state examiner, and the report of such audit shall be filed with the county superintendent not later than the first week in August.

History: En. Sec. 4, Ch. 192, L. 1911; amd. Sec. 512, Ch. 76, L. 1913; amd. Sec. 3, Ch. 81, L. 1917; amd. Sec. 15, Ch. 196, L. 1919; re-en. Sec. 1052, R. C. M. 1921; amd. Sec. 1, Ch. 164, L. 1931.

#### CHAPTER 20

GRADES AND COURSES OF STUDY IN THE PUBLIC SCHOOLS-CORRESPONDENCE SCHOOLS—VISUAL TEACHING

Section 75-2001. Public school defined.

75-2002. Courses of instruction.

75-2003. Sectarian publications prohibited.

75-2004. Who may attend.

75-2005. Kindergarten free. 75-2006. State correspondence school created—fees.

75-2007. Director.

75-2008. Funds allotted to.

75-2009. Health instruction in public schools required. 75-2010. Duty of superintendent of public instruction.

75-2011. Creation of library of visual teaching aids. 75-2012. Courses of instruction in visual education—superv 75-2013. Conservation education—establishment of course. Courses of instruction in visual education—supervision.

75-2014. Supplementary conservation education at state university.

75-2015. Type of conservation courses of instruction.

75-2016. Private instruction in applied music—school credits.

75-2017. Applied music courses—supervision by state department of public

75-2001. (1053) Public school defined. A public school is a school established and maintained under the laws of this state at public expense and comprising the elementary grades, and, when established, the kindergarten and the high school including all the junior and senior grades of high school work.

History: Ap. p. Sec. 32, p. 627, Cod. Stat. 1871; re-en. Sec. 31, p. 128, L. 1874; re-en. Sec. 1118, 5th Div. Rev. Stat. 1879; re-en. Sec. 1890, 5th Div. Comp. Stat. 1887; re-en. Sec. 1860, Pol. C. 1895; re-en. Sec. 911, Rev. C. 1907; amd. Sec. 600, Ch. 76, L. 1913; re-en. Sec. 1053, R. C. M. 1921; amd. Sec. 1, Ch. 72, L. 1931.

#### References

Box v. Duncan, 98 M 216, 38 P 2d 986.

## Collateral References

Schools and School Districts 9. 78 C.J.S. Schools and School Districts

75-2002. (1054) Courses of instruction. All public schools shall be taught in the English language, and instruction shall be given in the following branches, viz.: Reading, penmanship, written arithmetic, mental arithmetic, orthography, geography, English grammar, physiology and hygiene, with special reference to the effect of alcoholic stimulants and narcotics on the human system, civics (state and federal), United States history, the history of Montana, music, art, elementary agriculture including co-operative economics.

History: Ap. p. Sec. 33, p. 627, Cod. Stat. 1871; re-en. Sec. 32, p. 128, L. 1874; re-en. Sec. 1119, 5th Div. Rev. Stat. 1879; re-en. Sec. 1891, 5th Div. Comp. Stat. 1887; amd. Sec. 1861, Pol. C. 1895; amd. Sec. 1, Ch. 23, L. 1903; re-en. Sec. 912, Rev. C. 1907; amd. Sec. 601, Ch. 76, L. 1913; amd. Sec. 1, Ch. 127, L. 1917; re-en. Sec. 1054, R. C. M. 1921; amd. Sec. 1, Ch. 158, L. 1937. Cal. Pol. C. Secs. 1664, 1665.

#### References

Perkins v. Trask, 95 M 1, 8, 23 P 2d 982.

#### Collateral References

Schools and School Districts = 164. 79 C.J.S. Schools and School Districts § 485.

43 Am. Jur. 326, Public Securities and Obligations, §§ 68 et seq.; 47 Am. Jur., Schools, p. 352, §§ 76 et seq.; p. 441, §§ 200 et seq.

75-2003. (1055) Sectarian publications prohibited. No publication of a sectarian, partisan, or denominational character shall be used or distributed in any school, or be made a part of any school library; nor shall any sectarian or denominational doctrines be taught therein.

History: Ap. p. Sec. 35, p. 628, Cod. Stat. 1871; re-en. Sec. 34, p. 129, L. 1874; re-en. Sec. 1121, 5th Div. Rev. Stat. 1879; re-en. Sec. 1893, 5th Div. Comp. Stat. 1887; amd. Sec. 1863, Pol. C. 1895; re-en. Sec. 914, Rev. C. 1907; re-en. Sec. 609, Ch. 76, L. 1913; re-en. Sec. 1055, R. C. M. 1921. Cal. Pol. C. Sec. 1672.

## Collateral References

Schools and School Districts 165. 79 C.J.S. Schools and School Districts 486.

Bible distribution or reading in public schools, 45 ALR 2d 742.

75-2004. (1056) Who may attend. Every public school not otherwise provided for by law shall be open to the admission of all children between the age of six and twenty-one years residing in the school district, and the board of trustees shall have the power to admit children not residing in the district as hereinbefore provided; provided, however, that trustees may establish continuation schools, part-time and night schools for persons over twenty-one years of age; provided, that none of the funds apportioned under section 75-1315 shall be expended for such purposes.

History: Ap. p. Sec. 32, p. 627, Cod. Stat. 1871; re-en. Sec. 31, p. 128, L. 1874; re-en. Sec. 1118, 5th Div. Rev. Stat. 1879; re-en. Sec. 1890, 5th Div. Comp. Stat. 1887; re-en. Sec. 1860, Pol. C. 1895; ap. p. Sec. 911, Rev. C. 1907; re-en. Sec. 604, Ch. 76, L. 1913; amd. Sec. 16, Ch. 196, L. 1919; re-en. Sec. 1056, R. C. M. 1921. Cal. Pol. C. Sec. 1662.

### Age of Admission to School

A reasonable interpretation of constitutional and statutory provisions specifying that school shall be open to children between the ages of 6 and 21 years, read again in connection with other provisions requiring a thorough education, is that a child must be allowed to enter the first grade sometime during his seventh year after reaching his sixth birthday. Each local school district has the power to admit children into the first grade who are

not yet 6 years of age and each school district may establish a "cut-off" date governing entry into the first grade. State ex rel. Ronish v. School District No. 1, 136 M 453, 348 P 2d 797.

#### Mandamus

The matter of maintaining or closing of any particular school or schools, being addressed to the discretion of the board, cannot be controlled by mandamus. State ex rel. Robinson v. Desonia, 67 M 201, 203, 215 P 220.

#### References

Peterson v. School Board, 73 M 442, 445, 236 P 670.

## Collateral References

Schools and School Districts = 152, 153. 79 C.J.S. Schools and School Districts §§ 448, 449.

75-2005 SCHOOLS

75-2005. (1057) Kindergarten free. The school board of any school district in the state shall have power to establish and maintain free kindergartens in connection with the public schools of said district, for the instruction of children between three and six years residing in said district. and shall establish such course of training, study, and discipline, and such rules and regulations governing such preparatory or kindergarten schools, as said board may deem best; provided, that nothing in this act shall be construed to change the law relating to the taking of the census of the school population or the apportionment of state and county school funds among the several counties and districts in the state; provided, further, that the cost of establishing and maintaining such kindergartens shall be paid from the school funds of said district, and the said kindergartens shall be a part of the public school system and governed, as far as practicable, in the manner and by the same officers as is now or hereafter may be provided by law for the government of the other public schools of the state; provided, further, that the teachers of kindergarten schools shall pass such examination on kindergarten work as the kindergarten department of the state normal school may direct; provided, that a certificate from a kindergarten teacher's institute of recognized standing shall be recognized by the state normal school.

History: En. Sec. 1, p. 64, L. 1899; re-en. Sec. 916, Rev. C. 1907; amd. Sec. 602, Ch. 76, L. 1913; re-en. Sec. 1057, R. C. M. 1921. Cal. Pol. C. Sec. 1662.

#### Collateral References

Schools and School Districts \$\sim 163\$. 79 C.J.S. Schools and School Districts \$484.

Power and duty of school authorities to maintain kindergartens or specialized departments. 70 ALR 1313.

75-2006. State correspondence school created—fees. There is hereby created a state correspondence school which shall serve the needs of (1) eighth grade graduates who because of remoteness or inability are unable to attend a regular high school, (2) students who need subjects not offered in a regular high school, (3) homebound incapacitated or isolated children who are unable to attend a regular elementary or high school, (4) noncitizens who are unable to attend established classes for preparation for citizenship, (5) inmates of the state prison. The services of this school shall be available to the above mentioned students and the inmates of the state prison at fees to be determined and set by the state superintendent of public instruction with the approval of the state board of education; provided, that in the case of isolated, homebound or incapacitated pupils for whom no regular school is provided, such fees for elementary students shall be paid by the district of residence from the general fund, and in the case of high school students from the high school transfer fund of county of residence; fees for students taking enrichment courses may either be paid by the pupil or the school attended, and adults taking citizenship preparation courses shall pay their own fees.

History: En. Sec. 1, Ch. 70, L. 1939; amd. Sec. 1, Ch. 220, L. 1951; amd. Sec. 1, Ch. 74, L. 1959.

75-2007. Director. The director of the Montana supervised correspondence study school shall be appointed by the state superintendent of public instruction, and the rules and regulations necessary for the proper conduct of this school shall be made by the state superintendent of public instruction subject to the approval of the state board of education.

History: En. Sec. 2, Ch. 70, L. 1939.

75-2008. Funds allotted to. The state shall set aside annually from the state public school equalization fund an appropriation sufficient to carry out the purposes of this act, such appropriation to be allotted to the budget of the state department of public instruction.

History: En. Sec. 3, Ch. 70, L. 1939; amd. Sec. 2, Ch. 220, L. 1951.

Schools and School Districts 19(1).
78 C.J.S. Schools and School Districts

75-2009. Health instruction in public schools required. That on and after September 1941 instruction in health, physical education and recreation shall be established and made a part of the course of instruction and training in the public elementary schools and secondary schools of the state, provided, however, that no further special qualifications shall be required of persons teaching in the public elementary and secondary schools of the state until required by the state board of education.

History: En. Sec. 1, Ch. 49, L. 1941.

75-2010. Duty of superintendent of public instruction. The state superintendent of public instruction shall prepare courses of instruction for the public elementary and secondary schools of the state; and, to provide necessary and adequate supervision for the purpose of carrying out this act, shall appoint a supervisor with a major in physical education from an accredited four (4) year institution.

History: En. Sec. 2, Ch. 49, L. 1941.

75-2011. Creation of library of visual teaching aids. There is hereby created a library of visual teaching aids for the purpose of acquiring through purchase, donation, lease, loan, gift, or manufacture, a depository consisting of instructional sound films, slides, charts, graphs, models, pictures, dioramas and other visual teaching aids which may be approved by the state superintendent of public instruction. These materials will be made available on a rental fee basis, plus transportation, to and from the elementary and secondary schools and educational groups within the state.

History: En. Sec. 1, Ch. 71, L. 1941.

References

Colwell v. City of Great Falls, 117 M 126, 143, 157 P 2d 1013.

75-2012. Courses of instruction in visual education—supervision. The state superintendent of public instruction, with the approval of the state board of education, shall prepare courses of instruction in visual education for the public elementary and secondary schools of the state; and, to provide necessary and adequate supervision for the purpose of carrying out

this act, may appoint one (1) clerk and a supervisor who shall be a graduate of a four (4) year accredited institution of higher learning with special training and experience in the field of visual education, provided however, that the provisions of this act shall not be mandatory upon any school or school district.

History: En. Sec. 2, Ch. 71, L. 1941.

75-2013. Conservation education—establishment of course. On and after September, 1951, a continuing program of conservation education shall be taught in the public elementary and secondary schools of the state. The extent of such a program, and its application, shall be determined by the state board of education in co-operation with the state superintendent of public instruction, and shall include a widespread understanding of conservation as to facts, principles and attitudes.

History: En. Sec. 1, Ch. 125, L. 1951.

Collateral References

Schools and School Districts 164. 79 C.J.S. Schools and School Districts § 485.

75-2014. Supplementary conservation education at state university. To supplement this broad conservation program in the elementary and secondary schools of the state, the separate units of the greater university of Montana shall make available to all students in teacher preparatory courses basic instruction in conservation education; and the Montana state college at Bozeman and the Montana state university at Missoula shall include instruction in conservation in their community or public service programs.

History: En. Sec. 2, Ch. 125, L. 1951.

Type of conservation courses of instruction. The state board of education shall determine the type of conservation education to be taught in the public schools of the state and shall also determine the type of services in this general conservation program to be given by the above named agencies at the various units at the greater university of Montana; provided, that conservation education shall not be taught as a specific subject in the elementary and secondary schools but rather shall be taught as a part of and integrated with all other related subjects and courses.

History: En. Sec. 3, Ch. 125, L. 1951.

75-2016. Private instruction in applied music—school credits. in applied music may be granted to elementary and secondary students of the public schools who receive private instruction at their own expense in any one or several fields of music from qualified teachers to whom certificates in applied music have been issued by the state board of education under the provisions of subdivision 10 of section 75-2504. The term "applied music" as used in this section shall mean private instruction outside of school hours in the various fields of music.

History: En. Sec. 1, Ch. 63, L. 1951.

Collateral References Schools and School Districts == 164.

NOTE.—Section 75-2504, referred to above, was repealed by Sec. 11, Ch. 142, Laws 1949.

75-2017. Applied music courses—supervision by state department of public instruction. The state board of education through the state department of public instruction shall have the sole supervision over the entire field or fields of applied music in the public schools, and shall prescribe the courses of study and determine the allowable credits for students who meet such requirements.

History: En. Sec. 2, Ch. 63, L. 1951.

## CHAPTER 21

#### AMERICANIZATION SCHOOLS

Section 75-2101. Americanization schools, establishment of.

75-2102. Course of study, approval of.

75-2103. Combining districts for creation of. 75-2104. Expense of maintenance. 75-2105. Powers of board of trustees.

75-2101. (1318) Americanization schools, establishment of. The board of trustees of the several school districts in the state of Montana are hereby vested with power and authority to establish and maintain Americanization schools for all mentally normal persons over the age of sixteen years, in which schools there shall be taught the following subjects: Reading and writing the English language, American history and principles of citizenship, and any other school subjects which the school trustees deem necessarv for the Americanization of the students enrolled.

History: En. Sec. 1, Ch. 38, L. 1919; re-en. Sec. 1318, R. C. M. 1921.

Collateral References

Schools and School Districts 11. 78 C.J.S. Schools and School Districts

**75-2102.** (1319) Course of study, approval of. In districts of the first and second class having a superintendent of schools of the district, the course of study shall be approved by such superintendent of schools. In all other districts, the course of study shall be approved by the county superintendent and the superintendent of public instruction.

History: En. Sec. 2, Ch. 38, L. 1919; re-en. Sec. 1319, R. C. M. 1921.

Collateral References

Schools and School Districts 164. 79 C.J.S. Schools and School Districts

75-2103. (1320) Combining districts for creation of. The board of trustees of any two or more school districts may combine in establishing and maintaining such Americanization school, and the expenses thereof shall be borne by such school districts in proportion to the number of students enrolled from each district.

History: En. Sec. 3, Ch. 38, L. 1919; re-en. Sec. 1320, R. C. M. 1921.

75-2104. (1321) Expense of maintenance. The expenses of such Americanization schools shall be paid out of the funds provided for by section

History: En. Sec. 4, Ch. 38, L. 1919; re-en. Sec. 1321, R. C. M. 1921.

NOTE. - Section 75-3707, referred to above, was repealed by Sec. 24, Ch. 199, Laws 1949.

Collateral References

Schools and School Districts 108(1). 79 C.J.S. Schools and School Districts

75-2105. (1322) Powers of board of trustees. The board of trustees of any school district is hereby authorized to perform any and all acts which may be necessary for the purpose of carrying this act into effect, and for the further purpose of obtaining the benefits of any appropriation which may be made by the federal government for similar purposes.

History: En. Sec. 5, Ch. 38, L. 1919; re-en. Sec. 1322, R. C. M. 1921.

## CHAPTER 22

## SCHOOL DAY, MONTH AND YEAR-HOLIDAYS-CONSTITUTION, PIONEER AND ARBOR DAY

Section 75-2201. School day.

75-2202. School month-legal holiday.

75-2203. School year.

75-2204. Legal holidays—school sessions, when suspended.

75-2205. Constitution day designated. 75-2206. Public schools to observe. 75-2207. Pioneer day, how observed.

75-2208. Exercises in public schools.

75-2209. Pioneer medal. 75-2210. Copies of essays to be deposited with state historical library. 75-2211. Courses of exercises.

75-2212. Arbor day-date of. 75-2213. Arbor day exercises. 75-2214. Course of exercises.

75-2215. Arbor day proclamation by governor, schools to instruct.

75-2201. (1059) School day. The school day shall be a pupil instruction day of not less than six hours in length for grades four through twelve inclusive, that it be not less than four hours in length in the lowest primary grades, and not less than two hours in length for kindergartens; provided that in emergencies a lesser number of hours may be approved by the state board of education.

History: Ap. p. Sec. 36, p. 628, Cod. Stat. 1871; re-en. Sec. 35, p. 129, L. 1874; re-en. Sec. 1122, 5th Div. Rev. Stat. 1879; re-en. Sec. 1894, 5th Div. Comp. Stat. 1887; amd. Sec. 1862, Pol. C. 1895; amd. Sec. 7, p. 132, L. 1897; re-en. Sec. 913, Rev. C. 1907; re-en. Sec. 605, Ch. 76, L. 1913; re-en. Sec. 1059, R. C. M. 1921; amd. Sec. 1, Ch. 114, L. 1961. Cal. Pol. C. Sec. 1673.

State ex rel. Ronish v. School District No. 1, 136 M 453, 348 P 2d 797, 800.

### Collateral References

Schools and School Districts 262. 79 C.J.S. Schools and School Districts § 483.

(1060) School month—legal holiday. In every contract between any teacher and board of trustees, a school month shall be construed as twenty school days, or four weeks of five days each, and no teacher shall be required to teach school on a legal holiday, except as hereinafter provided, and no deduction from the teacher's time or wages shall be made by reason of the fact that a school day happens to be a legal holiday. Any contract made in violation of this section shall have no force or effect as against the teacher.

History: Ap. p. Sec. 40, p. 629, Cod. Stat. 1871; re-en. Sec. 39, p. 131, L. 1874; re-en. Sec. 1126, 5th Div. Rev. Stat. 1879; re-en. Sec. 1898, 5th Div. Comp. Stat. 1887; re-en. Sec. 1843, Pol. C. 1895; re-en. Sec. 904, Rev. C. 1907; amd. Sec. 1, Ch. 28, L. 1909; amd. Sec. 807, Ch. 76, L. 1913; amd. Sec. 1, Ch. 240, L. 1921; re-en. Sec. 1060, R. C. M. 1921. Cal. Pol. C. Sec. 1697.

## References

Finley v. School District No. 1, 51 M 411, 414, 153 P 1010; State ex rel. Ronish v. School District No. 1, 136 M 453, 348 P 2d 797, 800.

## Collateral References

Schools and School Districts 136.
78 C.J.S. Schools and School Districts 192.

75-2203. (1061) School year. The school year shall begin on the first day of July and end on the thirtieth day of June provided, that in all districts the school shall be in session for a period of at least one hundred eighty (180) days during any school year; provided, further, that any school district which shall fail to maintain a free school for at least one hundred eighty (180) such days during the next preceding year, or any school district that shall fail to make its annual report to the county superintendent, as provided by law, on or before August first, of each year, shall not be entitled to receive any apportionment of any school moneys from the state interest and income funds. Any and all such moneys forfeited by any school district shall be apportioned by the county superintendent to other school districts of his county.

History: Ap. p. Sec. 1864, Pol. C. 1895; re-en. Sec. 915, Rev. C. 1907; amd. Sec. 607, Ch. 76, L. 1913; amd. Sec. 4, Ch. 81, L. 1917; re-en. Sec. 1061, R. C. M. 1921; amd. Sec. 1, Ch. 183, L. 1933; amd. Sec. 2, Ch. 114, L. 1961. Cal. Pol. C. Sec. 1878.

#### Mandamus

The matter of maintaining or closing any particular school, being addressed to the discretion of the board, cannot be controlled by mandamus. State ex rel. Robinson v. Desonia, 67 M 201, 203, 215 P 220.

#### References

Finley v. School District No. 1, 51 M 411, 413, 153 P 1010; State ex rel. Ronish v. School District No. 1, 136 M 453, 348 P 2d 797, 800.

## Collateral References

Schools and School Districts \$\infty 162.
79 C.J.S. Schools and School Districts \$483.

75-2204. (1062) Legal holidays — school sessions, when suspended. No school shall be in session on the following holidays: New Year's day, Memorial day (May 30th), Independence day (July 4th), Labor day (first Monday in September), Veterans' day (November 11th), Thanksgiving day, or Christmas day; provided, however, that in school districts where the school building must be used for election purposes, state and national election day shall be deemed a legal holiday under the provisions of this act. No school shall be dismissed on the following holidays, but appropriate exercises as a part of the day's program shall be held in each school when school is in session, on each of the said holidays, and where such holidays fall on Saturday or Sunday such exercises shall be conducted on the Friday preceding such holiday: Lincoln's Birthday (February 12th), Washington's Birthday (February 22d), Arbor day (second Tues-

day of May), Flag day (June 14th), Columbus day (October 12th), Pioneer day (November 1st), and such other days as may hereafter be designated as legal holidays by the legislature or governor.

History: En. Sec. 1300, Ch. 76, L. 1913; amd. Sec. 2, Ch. 240, L. 1921; re-en. Sec. 1062, R. C. M. 1921; amd. Sec. 1, Ch. 31, L. 1957.

Collateral References

Schools and School Districts 162.
79 C.J.S. Schools and School Districts 483.

75-2205. Constitution day designated. That the 17th day of September of each year shall be designated and known as "Constitution day" in the state of Montana.

History: En. Sec. 1, Ch. 194, L. 1937.

75-2206. Public schools to observe. That all public schools and high schools within the state shall observe "Constitution day" by conducting appropriate exercises in commemoration thereof under the direction of the superintendent of public instruction.

History: En. Sec. 2, Ch. 194, L. 1937.

**75-2207.** (1063) **Pioneer day, how observed.** The first Monday of November of each year shall be designated and known as Pioneer day in the state of Montana.

History: En. Sec. 1, Ch. 88, L. 1903; 1, Ch. 35, L. 1909; re-en. Sec. 1400, Ch. 76, re-en. Sec. 1025, Rev. C. 1907; amd. Sec. L. 1913; re-en. Sec. 1063, R. C. M. 1921.

75-2208. (1064) Exercises in public schools. On said Pioneer day in the public schools the afternoon thereof shall be devoted to the study and discussion of pioneers and pioneer history of the region of country now comprising the state of Montana.

History: En. Sec. 2, Ch. 88, L. 1903; 1400, Ch. 76, L. 1913; re-en. Sec. 1064, R. C. re-en. Sec. 1026, Rev. C. 1907; amd. Sec. M. 1921.

75-2209. (1065) Pioneer medal. The state board of education is hereby authorized to award annually its pioneer medal to the student of the public schools or state institutions who shall, on said day deliver the best essay on such subject of pioneer history, having regard to historical research and literary merit.

History: En. Sec. 3, Ch. 88, L. 1903; re-en. Sec. 1027, Rev. C. 1907; re-en. Sec. 1400, Ch. 76, L. 1913; re-en. Sec. 1065, R. C. M. 1921.

#### Collateral References

Schools and School Districts \$506.

75-2210. (1066) Copies of essays to be deposited with state historical library. Copies of such essays shall be filed by the said state board of education with the librarian of the historical and miscellaneous department of the state library.

History: En. Sec. 4, Ch. 88, L. 1903; 1, Ch. 35, L. 1909; re-en. Sec. 1400, Ch. 76, re-en. Sec. 1028, Rev. C. 1907; amd. Sec. L. 1913; re-en. Sec. 1066, R. C. M. 1921.

75-2211. (1067) Courses of exercises. The superintendent of public instruction shall have power and it shall be its duty to prescribe from year to year a suitable course of exercises to be observed in the public schools of the state on Pioneer day.

History: En. Sec. 5, Ch. 88, L. 1903; re-en. Sec. 1029, Rev. C. 1907; amd. Sec. 1, Ch. 35, L. 1909; amd. Sec. 1, Ch. 51, L. 1911; re-en. Sec. 1400, Ch. 76, L. 1913; re-en. Sec. 1067, R. C. M. 1921.

75-2212. (1068) Arbor day—date of. The second Tuesday of May in each year shall be known throughout the state of Montana as Arbor day.

History: En. Sec. 2040, 5th Div. Comp. Stat. 1887; amd. Sec. 1990, Pol. C. 1895; amd. Sec. 1, Ch. 11, L. 1907; re-en. Sec.

1022, Rev. C. 1907; amd. Sec. 1, Ch. 83, L. 1909; re-en. Sec. 1401, Ch. 76, L. 1913; re-en. Sec. 1068, R. C. M. 1921.

75-2213. (1069) Arbor day exercises. In order that the children in our public schools shall assist in the work of adorning the school grounds with trees, and to stimulate the minds of the children toward the benefit of preservation and perpetuation of our forests and the growing of timber, it shall be the duty of the authorities in every public school district in the state to assemble the children in their charge on the above day in the school building or elsewhere, as they may deem proper, and to provide for and conduct under the general supervision of the city superintendent, county superintendent, teachers and trustees or other school authorities having the general charge and oversight of the public schools in each city or district such exercises as shall tend to encourage the planting, preservation and protection of trees and shrubs, and an acquaintance with the best methods to be adopted to accomplish such results.

History: En. Sec. 1991, Pol. C. 1895; 1401, Ch. 76, L. 1913; re-en. Sec. 1069, re-en. Sec. 1023, Rev. C. 1907; re-en. Sec. R. C. M. 1921.

75-2214. (1070) Course of exercises. The superintendent of public instruction shall have power to prescribe from year to year a course of exercises and instruction in the subject hereinbefore mentioned, which shall be adopted and observed by the said public school authorities on Arbor day.

History: En. Sec. 1992, Pol. C. 1895; 1401, Ch. 76, L. 1913; re-en. Sec. 1070, re-en. Sec. 1024, Rev. C. 1907; re-en. Sec. R. C. M. 1921.

75-2215. (3634) Arbor day proclamation by governor, schools to instruct. For the purpose of advancing the interests of tree planting and arboriculture in this state, the second Tuesday in May is hereby designated as Arbor day, and it is duty of the governor to annually make his proclamation setting apart that day for the planting of trees and for beautifying homes, cemeteries, highways, public grounds, and landscapes, and the teachers in the public schools must on that day instruct the pupils as to the importance of tree planting and give practical lessons in landscape gardening.

History: En. Sec. 2040, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 103, Ex. L. 1887; re-en. Sec. 3380, Pol. C. 1895; amd. Sec. 2, Ch. 11, L. 1907; re-en. Sec. 2095, Rev. C. 1907; re-en. Sec. 3634, R. C. M. 1921.

Collateral References
Holidays 2.
40 C.J.S. Holidays § 2.

# CHAPTER 23

FIRE DRILLS—INSTRUCTION IN FIRE DANGERS AND PREVENTION AND PREVENTION OF COMMUNICABLE DISEASES

Section 75-2301. Fire drills.

75-2302. Instruction in fire dangers and prevention thereof.

75-2303. Prevention of communicable diseases.

75-2301. (1071) Fire drills. In all schools of the state, either public or private, in which thirty or more children are enrolled it shall be the duty of the teacher or teachers therein employed to instruct the children under their immediate control and charge once each week during the first month of school and once each month thereafter in "fire drill" as hereinafter provided, except that additional drills may be held if deemed necessary by the teacher or school administrator.

A fire alarm shall be given by striking a gong, and immediately upon such alarm the children shall be required to form immediately a line and leave the building in an orderly manner, through the exit and (or) exits that will most expeditiously clear the building. There shall be no certain day of the week or hour of the day for giving such alarm, and it shall be given without previous warning to the children.

It shall be the duty of the trustees or directors, or other persons having control and management of any school building of the class mentioned herein, to provide one or more gongs therefor, with such means of sounding the same as may be approved by the state fire marshal. Each member of any board of trustees or directors, or any other person whose duty it is to install said gongs as herein provided, who fails or refuses so to do, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five nor more than fifty dollars.

Any teacher who fails or refuses to instruct in said fire drill in the manner provided for in this chapter, after the installation of gongs, as above provided, shall be deemed guilty of a misdemeanor, and shall upon conviction be fined not less than five nor more than twenty-five dollars.

History: En. Sec. 610, Ch. 76, L. 1913; re-en. Sec. 1071, R. C. M. 1921; amd. Sec. 1, Ch. 90, L. 1931; amd. Sec. 1, Ch. 24, L. 1959.

Collateral References

Schools and School Districts 169.
79 C.J.S. Schools and School Districts 493.

Cross-Reference

Fire escapes, secs. 69-1801 to 69-1810.

75-2302. (1072) Instruction in fire dangers and prevention thereof. Every teacher or instructor in every public, private, or parochial school of elementary grade, consisting of more than ten pupils, shall devote not less than ten minutes in each week during which school is in session to the instruction of pupils in fire dangers.

For the purpose of such instruction it shall be the duty of the commissioner of insurance to prepare a book, conveniently arranged in chapters or lessons, such chapters or lessons to be in number sufficient to provide a different chapter or lesson for each week of the maximum school year, one of such lessons to be read by the teachers in such school each week;

provided, that if it is advisable, and found possible, to secure such lessons as may have been prepared for this purpose, or in use in another state, the same may be used in this state.

This book shall be published at the expense of the state from the amount appropriated for public printing, under the direction of the state superintendent of public instruction, and shall be distributed in quantities sufficient to provide a copy for each teacher required by the provisions of this chapter to give the instruction herein provided for; the distribution to be made by the state superintendent of public instruction.

Willful neglect by any principal, or other person in charge of any public, private, or parochial school of the elementary grades to comply with the provisions of this chapter, shall be a misdemeanor, punishable for each offense by a fine of not less than five dollars nor more than twenty dollars.

History: En. Sec. 1, Ch. 24, L. 1911; re-en. Sec. 611, Ch. 76, L. 1913; re-en. Sec. 1072, R. C. M. 1921.

75-2303. (1073) Prevention of communicable diseases. There shall be taught in every year in every public school of elementary grade in Montana the principal modes by which each of the dangerous communicable diseases spread, and the method for the restriction and prevention of each such diseases as smallpox, diphtheria, scarlet fever, measles, tuberculosis, chickenpox, and such other diseases as may be named and attention called to the same by the board of health of this state.

School boards shall annually send to the public school superintendents and teachers throughout the state printed data and statements which will enable them to comply with the provisions of this chapter.

School boards are hereby required to direct superintendents and teachers to give oral and blackboard instruction, using the data and statements supplied by the state board of health.

Neglect or refusal on the part of any superintendent or teacher to comply with the provisions of this chapter shall be considered a sufficient cause for dismissal from the school by the school board.

Any member of any school board who shall willfully neglect or refuse to comply with any provisions of this chapter shall be deemed guilty of a misdemeanor, and shall be subject to punishment by a fine not exceeding one hundred dollars.

History: En. Sec. 1, Ch. 27, L. 1909; amd. Sec. 612, Ch. 76, L. 1913; re-en. Sec. 1073, R. C. M. 1921.

### CHAPTER 24

### TEACHERS—POWERS AND DUTIES—ELECTION—DISMISSAL

Section 75-2401. Re-election of teachers—when automatic—acceptance.

75-2402. Powers. 75-2403. Duties.

75-2404. Reports.
75-2405. Moral and civic instruction.
75-2406. Care of school grounds, etc.

75-2407. Corporal punishment.

75-2408. Abuse of teachers by parents and others.

75-2409. Disturbance of public schools. 75-2410. Undue punishment of pupils.

75-2411. Dismissal—appeal.

75-2401. (1075) Re-election of teachers—when automatic—acceptance. After the election of any teacher or principal for the fourth consecutive year in any school district in the state, such teacher or principal so elected shall be deemed re-elected from year to year thereafter at the same salary unless the board of trustees shall by majority vote of its members on or before the first day of April give notice in writing to said teacher or principal that he has been re-elected or that his services will not be required for the ensuing year, but in this written notice, the board of trustees, if requested by the teacher or principal, must declare clearly and explicitly the specific reason or reasons for the failure of re-employment of such teacher. The teacher or principal, if he so desires, shall be granted a hearing and reconsideration of such dismissal, before the board of trustees of that school district. The request for a hearing and reconsideration must be made in writing and submitted to the board of school trustees within ten (10) days after receipt of notice of dismissal. The board of trustees must hold a hearing and reconsider its action within ten (10) days after receipt of such request for a hearing and reconsideration. Provided that nothing in this act shall be construed to prevent the re-election of such teacher or principal by such board at an earlier date, and also provided that in case of re-election of such teacher or principal, he shall notify the board of trustees in writing within twenty (20) days after the notice of such re-election of his acceptance of the position tendered him for another year and failure to so notify the board of trustees shall be regarded as conclusive evidence of his nonacceptance of the position.

History: En. Sec. 801, Ch. 76, L. 1913; re-en. Sec. 1075, R. C. M. 1921; amd. Sec. 1, Ch. 87, L. 1927; amd. Sec. 1, Ch. 166, L. 1949; amd. Sec. 1, Ch. 26, L. 1957.

# Closing of School

Where teacher not notified that her services would not be required for next succeeding year, brought action to recover the amount she would have received if reemployed, having taught for three consecutive years entitling her to automatic re-employment under this section, because school was closed on the enrollment having fallen to two pupils, the board under Sec. 1044, R. C. M. 1935 (since repealed), had the power to close the school and void the contract, as well as under a clause of her contract providing that if school closed for lack of attendance the contract should be considered at an end. Moses v. School District No. 53, 107 M 300, 305, 86 P 2d 407

# Conditions of Automatic Re-employment

This section providing that when a teacher has served three consecutive years

in any district in the state she shall be deemed re-elected from year to year unless given notice on or before the first day of May that her services will not be required for the ensuing year, means re-employment under the same terms and conditions as the preceding year's employment. Moses v. School District No. 53, 107 M 300, 305, 86 P 2d 407.

### Demotion of Teacher

Where teacher, after seven years of teaching in town school was assigned to a rural ungraded school having five pupils and plaintiff refused assignment, the new assignment in effect was a demotion which required the same procedure as a removal or dismissal under this section, and plaintiff properly refused to accept it, the purpose of the Teacher Tenure Act being not merely to insure teaching employment, but also security to teachers in the position, rank, grade or status they have attained. Smith v. School District No. 18, 115 M 102, 109, 139 P 2d 518.

### Liberal Construction

The requirements of this section with regard to notice of termination of employment are not mandatory and need not be strictly construed against school district in favor of teacher, but the act should be liberally construed to effect general purpose. Eastman v. School District No. 1, 120 M 63, 180 P 2d 472, 475.

### Mandamus for Renewal

Where nonunion schoolteachers were offered a salary increase only if they signed a contract which contained a union security clause, they could not sue in contract for the increased salary because they had no written contract with the district; but they were entitled to bring a mandamus action against the school district to obtain a judgment declaring that they could not be discriminated against, compelling the district to enter into contracts with them, and ruling that the union security provision was void. Benson v. School District No. 1, 136 M 77, 344 P 2d 117.

### Nepotism, Effect on Tenure

Where the father, mother and uncle of the only pupils attending school were the sole persons eligible to serve as trustees, the employment of the mother who, though elected as trustee preferred to act as teacher and did not qualify as trustee, was illegal under section 59-519, condemning nepotism; this section presupposing capacity to hold the position both legally and in fact, she therefore could not be deemed re-elected thereunder in the absence of notice to her, after three years of service, that her services would be no longer required. State ex rel. Hoagland v. School District No. 13, 116 M 294, 298, 151 P 2d 168.

### Notice of Dismissal

The provision that after the election of a teacher for the third consecutive time she shall be deemed re-elected from year to year thereafter unless the board of trustees gives notice in writing that her services will no longer be required, became a part of the contract of employment, binding upon both the teacher and the board of trustees; the notice of dismissal must be clear and explicit, and, no such notice having been given, plaintiff was automatically re-elected for the ensuing school year and entitled to recover the salary due her for the first month of that year as prayed for in the complaint. McBride v. School District No. 2, 88 M 110, 112, 290 P 252, explained in 116 M 294, 299, 151 P 2d 168.

The notice of dismissal which must be given a teacher entitled to the benefits of the tenure act, is one based upon

action by a majority of the board of trustees taken at a meeting thereof; hence, where two of the three members of the board decided in casual conversations had at their homes to dispense with the services of the teacher and notified her to that effect in writing, the notice was not the legal notice required and was insufficient to effect her dismissal. Day v. School District No. 21, 98 M 207, 211, 38 P 2d 595.

A notice given to a teacher by school board that it "decided not to renew your contract" substantially complied with this section and was sufficient to terminate teacher's contract of employment. Eastman v. School District No. 1, 120 M 63, 180 P 2d 472, 475.

# Retroactivity

Where a schoolteacher was re-employed for a second time before the enactment of the general school code of 1913, the court under this section properly sustained a general demurrer to her complaint in an action against the school board for breach of contract. Falligan v. School District No. 1, 54 M 177, 179, 169 P 803.

#### Tenure

A teacher who has taught school for three consecutive years and who possesses the other requisite qualifications prescribed by law, will be deemed re-elected from year to year thereafter and is entitled to the benefits flowing from the tenure act (this section), under which the board of trustees must, before May 1, by a majority vote, give the teacher written notice of her dismissal. Day v. School District No. 21, 98 M 207, 211, 38 P 2d 595.

In entering into a contract of employment of a teacher, the board of trustees and the teacher are presumed to have contracted with reference to the law on the subject then in force. Moses v. School District No. 53, 107 M 300, 305, 86 P 2d 407.

A teacher's tenure is a substantial, valuable and beneficial right, which cannot be taken away except for good cause. State ex rel. Saxtorph v. District Court, 128 M 353, 275 P 2d 209, 214.

The number of hours a teacher may teach in a day is not a factor in deter-

The number of hours a teacher may teach in a day is not a factor in determining her right to tenure. State ex rel. Saxtorph v. District Court, 128 M 353, 275 P 2d 209, 215.

### Transfer of Teacher

While a regularly employed teacher may be discharged for a good and sufficient cause yet the board has no power to transfer a teacher from a higher to a lower grade. Assigning a teacher to a lower grade is a "removal" and just as much so as a dismissal would be. Smith v. School District No. 18, 115 M 102, 115, 139 P 2d 518.

# Union Security Clause

School trustees have no authority or power to discriminate between teachers as to the amount of salary because of their membership or lack of membership in a labor union; therefore, a union security clause in a contract offered schoolteachers was void. Benson v. School District No. 1, 136 M 77, 344 P 2d 117.

### References

Le Clair v. School District No. 28, 74 M 385, 390, 240 P 391; State ex rel. Keeney v. Ayers, 108 M 547, 556, 92 P 2d 306.

#### Collateral References

Schools and School Districts 133.
78 C.J.S. Schools and School Districts \$\ 181, 197.

Right of teacher to compensation while school is closed. 6 ALR 742; 17 ALR 1224 and 21 ALR 741.

Services included in computing period of service for purpose of teachers' seniority, 2 ALR 2d 1033.

Dismissal of public schoolteacher because of disloyalty. 27 ALR 2d 487.

Personal liability of public school principals or teachers for negligence. 32 ALR 2d 178.

75-2402. (1076) Powers. Every teacher shall have power to hold every pupil to a strict accountability in school for any disorderly conduct on the way to or from school, or during intermission or recess, and to suspend from school any pupil for good cause; provided, that suspension shall be reported to the trustees as soon as practicable for their decision; provided, further, that in school districts employing a superintendent or principal, the power of suspension shall be vested in the superintendent or principal as directed by the rules of the board.

History: Ap. p. Sec. 41, p. 629, Cod. Stat. 1871; re-en. Sec. 40, p. 132, L. 1874; re-en. Sec. 1127, 5th Div. Rev. Stat. 1879; re-en. Sec. 1899, 5th Div. Comp. Stat. 1887; amd. Sec. 1844, Pol. C. 1895; re-en. Sec. 905, Rev. C. 1907; amd. Sec. 802, Ch. 76, L. 1913; re-en. Sec. 1076, R. C. M. 1921. Cal. Pol. C. Sec. 1696.

### Collateral References

Schools and School Districts € 169. 79 C.J.S. Schools and School Districts § 493.

47 Am. Jur. 375, Schools, § 111.

Validity of regulation by school authorities as to clothes of pupils. 18 ALR 649 and 30 ALR 1216.

Regulations forbidding pupils to leave school grounds during school hours. 32 ALR 1342 and 48 ALR 659.

Duty of teacher to perform services other than those which pertain to instruction. 38 ALR 1414.

Right to discipline pupil for conduct away from school grounds, 41 ALR 1312. Personal liability of school authorities for dismissal or suspension of pupil, 42 ALR 763.

Marriage or other domestic relations as ground for exclusion of pupil from public school. 63 ALR 1164.

75-2403. (1077) **Duties.** Teachers shall faithfully enforce in school the course of study and regulations prescribed, and if the teacher shall refuse or neglect to comply with such regulations, then the board of trustees shall be authorized to withhold any warrant for salaries due until such teacher shall comply therewith.

It shall be the duty of the teacher of every public school in this state to keep, in a neat and businesslike manner, a daily register in such form and upon such blanks as shall be prepared by the superintendent of public instruction, and no board of trustees shall draw any warrant for the salary of any teacher for the last month of his services in the school at the end of any term or year, until they shall have received a certificate from the district clerk that the said register has been properly kept, the summaries made, and the statistics entered, or until, by personal examination, they shall have satisfied themselves that it has been done.

History: Ap. p. Sec. 39, p. 629, Cod. Stat. 1871; re-en. Sec. 38, p. 131, L. 1874; re-en. Sec. 1125, 5th Div. Rev. Stat. 1879; re-en. Sec. 1897, 5th Div. Comp. Stat. 1887; amd. Sec. 1842, Pol. C. 1895; re-en. Sec. 903, Rev. C. 1907; amd. Sec. 803, Ch. 76, L. 1913; re-en. Sec. 1077, R. C. M. 1921. Cal. Pol. C. Sec. 1696.

### Collateral References

Schools and School Districts 144(1), 147.

78 C.J.S. Schools and School Districts §§ 218, 237.

75-2404. (1078) Reports. Every teacher employed in any public school shall make an annual report to the county superintendent on or before the tenth day of July next after the close of the school year, in the form and manner and on the blanks prescribed by the superintendent of public instruction. A copy of such report shall be furnished to the district clerk. Any teacher who shall end any school term before the close of the school year, shall make a report to the county superintendent immediately after the close of such term, and any teacher who may be teaching any school at the close of the school year shall in his annual report include all statistics from the school register for the entire school year, notwithstanding any previous report for a part of the year. Teachers shall make such additional reports as shall be required in pursuance of law by the superintendent of public instruction. No board of trustees shall draw any order or warrant for the salary of any teacher, for the last month of his services until the reports herein required shall have been made and received; provided, that in all schools acting under the direction of a city superintendent, teachers shall be required to report to such superintendent, whose report shall be accepted by the county superintendent and by the trustees in lieu of the teachers' reports; and that when there is no city superintendent, the report of the principal shall be accepted in lieu of the teachers' reports.

History: Ap. p. Sec. 38, p. 628, Cod. Stat. 1871; re-en. Sec. 37, p. 130, L. 1874; re-en. Sec. 1124, 5th Div. Rev. Stat. 1879; re-en. Sec. 1896, 5th Div. Comp. Stat. 1887; amd. Sec. 1841, Pol. C. 1895; re-en. Sec. 902, Rev. C. 1907; amd. Sec. 803, Ch. 76, L. 1913; amd. Sec. 5, Ch. 81, L. 1917;

re-en. Sec. 1078, R. C. M. 1921. Cal. Pol. C. Sec. 1696.

### Collateral References

Schools and School Districts 147.
78 C.J.S. Schools and School Districts

75-2405. (1079) Moral and civic instruction. It shall be the duty of all teachers to endeavor to impress on the minds of their pupils the principles of morality, truth, justice, and patriotism; to teach them to avoid idleness, profanity, and falsehood; to instruct them in the principles of free government, and to train them up to a true comprehension of the rights, duties and dignity of American citizenship.

History: En. Sec. 42, p. 630, Cod. Stat. 1871; re-en. Sec. 41, p. 132, L. 1874; re-en. Sec. 1128, 5th Div. Rev. Stat. 1879; re-en. Sec. 1900, 5th Div. Comp. Stat. 1887; re-en. Sec. 1845, Pol. C. 1895; re-en. Sec. 906, Rev. C. 1907; amd. Sec. 803, Ch. 76, L. 1913; re-en. Sec. 1079, R. C. M. 1921. Cal. Pol. C. Sec. 1667.

# Collateral References

Release of public school pupils from attendance for purpose of attending religious education classes. 2 ALR 2d 1371.

Bible distribution or reading in public schools. 45 ALR 2d 742.

Wearing of religious garb by public schoolteachers. 60 ALR 2d 300.

75-2406. (1080) Care of school grounds, etc. It shall be the duty of the teacher to exercise due diligence in the care of school grounds and buildings, furniture, apparatus, books, and supplies.

History: En. Sec. 803, Ch. 76, L. 1913; re-en. Sec. 1080, R. C. M. 1921.

### Collateral References

Duty of teacher to perform services other than those which pertain to instruction, 38 ALR 1414.

75-2407. (1081) Corporal punishment. Whenever it shall be deemed necessary to inflict corporal punishment on any student in the public schools, such punishment shall be inflicted without undue anger and only in the presence of teacher and principal, if there be one, and then only after notice to the parent or guardian; except that in cases of open and flagrant defiance of the teacher or the authority of the school, corporal punishment may be inflicted by the teacher or principal without such notice.

History: En. Sec. 803, Ch. 76, L. 1913; re-en. Sec. 1081, R. C. M. 1921.

79 C.J.S. Schools and School Districts  $\S~502.$ 

### Collateral References

Schools and School Districts 276.

Teacher's civil liability for administering corporal punishment to pupil. 43 ALR 2d 469.

75-2408. (1082) Abuse of teachers by parents and others. Any parent, guardian, or other person, who shall insult or abuse a teacher in the presence of the school, or anywhere on the school grounds or school premises, shall be deemed guilty of a misdemeanor, and shall be liable to a fine of not less than ten dollars nor more than one hundred dollars.

History: Ap. p. Sec. 57, p. 634, Cod. Stat. 1871; re-en. Sec. 56, p. 137, L. 1874; re-en. Sec. 1143, 5th Div. Rev. Stat. 1879; re-en. Sec. 1915, 5th Div. Comp. Stat. 1887; re-en. Sec. 2022, Pol. C. 1895; re-en. Sec. 1038, Rev. C. 1907; amd. Sec. 803, Ch. 76, L. 1913; re-en. Sec. 1082, R. C. M. 1921. Cal. Pol. C. Sec. 1867.

### Cross-Reference

Abuse of teacher, penalty, sec. 94-35-195.

### Collateral References

Schools and School Districts \$\infty 173.
79 C.J.S. Schools and School Districts \$512.

75-2409. (1083) Disturbance of public schools. Any person who shall willfully disturb any public school or any public school meeting, shall be deemed guilty of a misdemeanor, and shall be liable to a fine of not less than ten dollars nor more than one hundred dollars.

History: En. Sec. 58, p. 634, Cod. Stat. 1871; re-en. Sec. 57, p. 138, L. 1874; re-en. Sec. 1144, 5th Div. Rev. Stat. 1879; re-en. Sec. 1916, 5th Div. Comp. Stat. 1887; re-en. Sec. 2023, Pol. C. 1895; re-en. Sec. 1039, Rev. C. 1907; amd. Sec. 803, Ch. 76,

L. 1913; re-en. Sec. 1083, R. C. M. 1921.
Cal. Pol. C. Sec. 1868.

### Cross-Reference

Disturbance of school, penalty, sec. 94-1420.

75-2410. (1084) Undue punishment of pupils. Any teacher who shall maltreat or abuse any pupil by administering any undue or severe punishment shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not exceeding one hundred dollars.

History: En. Sec. 1846, Pol. C. 1895; 804, Ch. 76, L. 1913; re-en. Sec. 1084, re-en. Sec. 907, Rev. C. 1907; amd. Sec. R. C. M. 1921.

75-2411. (1085) Dismissal—appeal. In the case of the dismissal of any teacher before the expiration of any written contract entered into between such teacher and board of trustees for alleged immorality, unfitness, incompetence, or violation of rules, the teacher may appeal to the county superintendent; and if the superintendent decides that the removal was made

without good cause, the teacher so removed must be reinstated, and shall be entitled to compensation for the time lost during the pending of the appeal.

History: En. Sec. 1848, Pol. C. 1895; re-en. Sec. 909, Rev. C. 1907; re-en. Sec. 805, Ch. 76, L. 1913; re-en. Sec. 1085, R. C. M. 1921. Cal. Pol. C. Sec. 1698.

# Appeals to County School Superintendent

Writ of prohibition does not lie against the county superintendent of schools to prevent her from acting in an appeal taken to her by a teacher who had been denied re-employment by the school board since by this section appeals from such dismissals go to the county superintendent of schools. State ex rel. Saxtorph v. District Court, 128 M 353, 275 P 2d 209.

### Dismissal of Superintendent

This section, providing specifically for appeal to the county superintendent from an order dismissing a teacher has no application to an order of dismissal of a district school superintendent, the latter order being governed by section 75-1518 providing generally for appeal to the county superintendent from decisions of school officers and boards. State ex rel. Howard v. Ireland, 114 M 488, 500, 138 P 2d 569, distinguished in 120 M 63, 75, 180 P 2d 472.

### Right of Appeal as Part of Contract

The provision of the school law that in case of a dismissal of a teacher before the expiration of her written contract, she may appeal to the school authorities, becomes as much a condition of the contract as if expressly written therein. Kelsey v. School District No. 25, 84 M 453, 458, 276 P 26, explained in 114 M 488, 499, 138 P 2d 569.

### Rules Violation

The rules, a violation of which gives the school board the right and power to dis-

charge are the rules referred to in the teacher's contract, viz., "rules and regulations adopted by the Board of Trustees of the district, which are made a part hereof by reference." Hence a teacher could not be discharged for violations of rules of the superintendent of the high school, which rules were not part of the "rules and regulations adopted by the Board of Trustees of the District, which are made a part" of the teacher's contract. Hovland v. School District No. 52, 128 M 507, 278 P 2d 211, 212.

#### References

McBride v. School District No. 2, 88 M 110, 115, 290 P 252.

#### Collateral References

Schools and School Districts 141(5). 78 C.J.S. Schools and School Districts 209 et seq.

47 Am. Jur. 386, Schools, §§ 125, 126.

Negligence or incompetency as a ground for discharge of schoolteacher. 49 ALR 482.

Right to dismiss teacher because services not needed. 63 ALR 1416.

Temporary inability of teacher without fault of school authorities to perform duty as justifying termination of contract or removal. 72 ALR 283.

Marriage of teacher as ground of removal or discharge. 81 ALR 1033 and 118 ALR 1092.

Candidacy for or incumbency of public office or other political activity by teacher or other school employee as ground for dismissal or compulsory leave of absence. 136 ALR 1154.

Dismissal of public schoolteacher because of disloyalty. 27 ALR 2d 487.

Assertion of immunity against self incrimination as ground for discharge of teacher, 44 ALR 2d 799.

# CHAPTER 25

### TEACHERS' EXAMINATIONS AND CERTIFICATES

Section 75-2501. Examinations and certificates—certificates of qualification required of teachers.

75-2502 to 75-2505. Repealed.

75-2506. Revocation and suspension.

75-2507 to 75-2510. Repealed.

75-2511. The state board of education.

75-2512. State superintendent of public instruction.

75-2513. Definition of teacher.

75-2514. Definition of qualified teacher.

75-2515. Applicants for certificates of teachers trained in institutions other than the units of the university of Montana.

75-2516. Classes of certificates for teaching.

75-2517. Repealed.

75-2518. Outstanding certificates for teaching.

75-2519. Recording of certificates.

75-2520. Duration and renewal of certificates. 75-2521. Fees for certificates for teaching. 75-2522. Emergency authorization to teach.

75-2501. (1088) Examinations and certificates—certificates of qualification required of teachers. 1. No certificate to teach in the public schools of Montana shall be granted to any person who is not a citizen of the United States. This requirement shall not apply to such persons who are not citizens of the United States but who are approved annually by the state board of education for employment as exchange teachers from foreign countries or who are approved annually for employment for special instruction, study or research in the public schools, the public junior colleges and the units of the university of Montana. During no school or university year may the number of persons so approved for employment by the state board of education exceed a total of one hundred (100) persons for both the public schools and the units of the university of Montana.

- 2. No person is eligible to teach in any public school in this state, or to receive a certificate to teach, who has not attained the age of eighteen (18) years and who has not secured and presented to the certification authority a satisfactory health certificate from a reputable physician.
- 3. No person shall be accounted a qualified teacher within the meaning of the school law who has not first secured from the certificating authority a certificate setting forth his qualifications to teach in the public schools of Montana.
- 4. All certificates before they shall be valid in any county must be registered in the office of the county superintendent of schools of such county within 60 days after the term of service of any teacher begins, and no salary for services rendered after this grace period has expired shall be paid any teacher who fails to register such certificate.

History: Ap. p. Sec. 900, Ch. 76, L. 1913; amd. Sec. 20, Ch. 196, L. 1919; reen. Sec. 1088, R. C. M. 1921; amd. Sec. 8, Ch. 131, L. 1923; amd. Sec. 1, Ch. 147, L. 1931; amd. Sec. 1, Ch. 90, L. 1947; amd. Sec. 1, Ch. 83, L. 1961; amd. Sec. 1, Ch. 90, L. 1961.

### Compiler's Note

Section 75-2501 was amended twice in 1961, once by section 1 of Ch. 83, Laws 1961, and once by section 1 of Ch. 90, Laws 1961. Both acts were approved by the governor on February 28, 1961, and neither contained an effective date clause. Neither act mentioned nor contained the changes made by the other, but each amended the section in different particulars. The amendments do not appear to conflict with each other, and both would be good if they are not in conflict. The

section set out above shows the amendments by both chapters.

# Collateral References

Schools and School Districts©=127. 78 C.J.S. Schools and School Districts § 154 et seq.

47 Am. Jur. 324, Schools, §§ 42 et seq.

Right of school authorities to make membership or nonmembership in teachers' association or other organization a condition of employment as a teacher. 72 ALR 1225.

Matters proper for consideration in appointment of teachers. 94 ALR 1484.

Power of school authorities to transfer teacher from one school or district to another. 103 ALR 1382.

Rejection of public schoolteacher because of disloyalty. 27 ALR 2d 487.

# 75-2502. (1089) Repealed—Chapter 142, Laws of 1949.

### Repeal

This section (Sec. 900 in part, Ch. 76, L. 1913; Sec. 20, Ch. 196, L. 1919; Sec. 8, Ch. 131, L. 1923; Sec. 2, Ch. 147, L. 1931; Sec. 3, Ch. 186, L. 1943), authorizing the

state board of education to make rules and regulations, was repealed as Sec. 1089, Revised Codes 1935, by Sec. 11, Ch. 142, Laws 1949. For similar provision in new law, see sec. 75-2511.

# 75-2503. (1090) Repealed—Chapter 142, Laws of 1949.

### Repeal

This section (Sec. 900 in part, Ch. 76, L. 1913; Sec. 20, Ch. 196, L. 1919; Sec. 8, Ch. 131, L. 1923; Sec. 3, Ch. 147, L. 1931; Sec. 4, Ch. 186, L. 1943), providing for a county board of educational examiners, was repealed as Sec. 1090, Revised Codes 1935, by Sec. 11, Ch. 142, Laws 1949.

# 75-2504. (1092) Repealed—Chapter 142, Laws of 1949.

### $\mathbf{R}$ epeal

This section (Sec. 1, Ch. 47, L. 1907; Sec. 901, Ch. 76, L. 1913; Sec. 8, Ch. 131, L. 1923; Sec. 5, Ch. 147, L. 1931; Sec. 5, Ch. 186, L. 1943), relating to the various types of certificates, was repealed as Sec. 1092, Revised Codes 1935, by Sec. 11, Ch. 142, Laws 1949. For present law on same subject, see sec. 75-2516.

# 75-2505. (1095) Repealed—Chapter 142, Laws of 1949.

### Repeal

This section (Sec. 2, Ch. 47, L. 1907; Sec. 904, Ch. 76, L. 1913; Sec. 22, Ch. 196, L. 1919; Sec. 8, Ch. 131, L. 1923; Sec. 7, Ch. 147, L. 1931; Sec. 6, Ch. 186, L. 1943), prescribing the application fees for licenses, was repealed as Sec. 1095, Revised Codes 1935, by Sec. 11, Ch. 142, Laws 1949. For corresponding provisions in new law, see sec. 75-2521.

- 75-2506. (1097) Revocation and suspension. 1. Revocation and suspension of permits and certificates. The state board of education is authorized and required to revoke and annul, at any time, any certificate heretofore issued by the state board of education or state board of educational examiners, or state superintendent of public instruction, or which may hereafter be issued by the state board of education or state superintendent of public instruction, for any cause which would have required or authorized a refusal to grant if it had been known at the time it was granted, and for incompetency, immorality, intemperance, physical inability, crime against the state law, refusal to perform duty or general neglect of the business of the school; but, before any such revocation, the holder shall be served by the state superintendent of public instruction with a written statement of the charges against him, and shall be afforded an opportunity for defense before the state board of education.
- 2. Suspension and cancellation of teachers' permits and certificates for violation of contract. Should any teacher employed by a board of school trustees fail to comply with the terms of any contract entered into by such teacher and trustees, without the consent of the trustees in writing, or without good cause, in the judgment of the state board of education, said teacher shall be guilty of unprofessional conduct, and the state board of education may, upon receiving notice of such fact, and after making investigation of the circumstances thereof, suspend the permit or certificate of such teacher for the remainder of the school year, or the next ensuing year, or both. A second serious violation of contract by the same teacher shall, in the discretion of the state board of education, be deemed sufficient cause for the revocation and cancellation of said teacher's permit or contract.

History: En. Sec. 905, Ch. 76, L. 1913; amd. Sec. 23, Ch. 196, L. 1919; re-en. Sec. 1097, R. C. M. 1921; amd. Sec. 8, Ch. 131, L. 1923; amd. Sec. 7, Ch. 186, L. 1943; amd. Sec. 1, Ch. 171, L. 1961.

#### Collateral References

Schools and School Districts 132.
78 C.J.S. Schools and School Districts 165 et seq.

# 75-2507. (1098) Repealed—Chapter 142, Laws of 1949.

### Repeal

This section (Sec. 905, Ch. 76, L. 1913; Sec. 23, Ch. 196, L. 1919; Sec. 8, Ch. 131, L. 1923; Sec. 8, Ch. 147, L. 1931; Sec. 8, Ch. 186, L. 1943), providing for the renewal of certificates, was repealed as Sec. 1098, Revised Codes 1935, by Sec. 11, Ch. 142, Laws 1949. For corresponding provision of new law, see sec. 75-2520.

# 75-2508. (1101) Repealed—Chapter 142, Laws of 1949.

### Repeal

This section (Sec. 907, Ch. 76, L. 1913; Sec. 25, Ch. 196, L. 1919; Sec. 8, Ch. 131, L. 1923; Sec. 10, Ch. 147, L. 1931; Sec. 9, Ch. 186, L. 1943), exempting existing certificates, was repealed as Sec. 1101, Revised Codes 1935, by Sec. 11, Ch. 142, Laws 1949.

# 75-2509. (1102) Repealed—Chapter 142, Laws of 1949.

### Repeal

This section (Sec. 908, Ch. 76, L. 1913; Sec. 26, Ch. 196, L. 1919; Sec. 8, Ch. 131, L. 1923; Sec. 11, Ch. 147, L. 1931; Sec. 10, Ch. 186, L. 1943), prohibiting discrimination against teachers trained in Montana, was repealed as Sec. 1102, Revised Codes 1935, by Sec. 11, Ch. 142, Laws 1949.

# 75-2510. (1104) Repealed—Chapter 89, Laws of 1951.

### Repeal

This section (Sec. 910, Ch. 76, L. 1913; Sec. 8, Ch. 131, L. 1923), relating to the issuance of certain types of certificates

for purpose of articulating with neighboring states, was repealed by Sec. 1, Ch. 89, Laws 1951, effective February 28, 1951.

75-2511. The state board of education. The state board of education shall prescribe and adopt rules and regulations for the issuance of all certificates for teaching in accordance with the methods and policies formulated and recommended by the state superintendent of public instruction for approval and adoption by such board.

History: En. Sec. 1, Ch. 142, L. 1949.

78 C.J.S. Schools and School Districts § 163.

# Collateral References

Schools and School Districts 130.

75-2512. State superintendent of public instruction. The state superintendent of public instruction shall issue all certificates for teachers in accordance with the rules and regulations approved and adopted by the state board of education.

History: En. Sec. 2, Ch. 142, L. 1949.

78 C.J.S. Schools and School Districts § 163.

### Collateral References

Schools and School Districts 230.

75-2513. Definition of teacher. The term "teacher," for purposes of certification, means and includes any person employed in a public school as a member of the instructional, supervisory, and administrative staff, such as classroom teacher, librarian, supervisor, principal and superintendent.

History: En. Sec. 3, Ch. 142, L. 1949.

75-2514. Definition of qualified teacher. A "qualified teacher" is one who holds a valid certificate for teaching issued by the state superintendent of public instruction under the rules and regulations prescribed by the state board of education to perform the particular service for which employed in a public school.

History: En. Sec. 4, Ch. 142, L. 1949.

75-2515. Applicants for certificates of teachers trained in institutions other than the units of the university of Montana. Wherever a certificate for teaching is authorized to be issued to any holder of a diploma or degree of a unit of the university of Montana, such certificate may also be issued by the state superintendent of public instruction, in accordance with the rules and regulations approved and adopted by the state board of education, to any holder of a diploma or degree of any accredited institution of equivalent rank and standing of this or any other state, granted by virtue of the completion of a course in teacher education essentially equivalent in content required by any of the units of the university of Montana.

History: En. Sec. 5, Ch. 142, L. 1949.

- 75-2516. Classes of certificates for teaching. The state superintendent of public instruction may issue the following classes of certificates for teaching in accordance with the rules and regulations approved and adopted by the state board of education:
- Class 1. Professional certificate. The professional certificate may be issued to applicants who have completed a teacher education program which includes a bachelor's degree and a minimum of one year of study beyond the degree, such degree and additional study to have been taken at a unit of the university of Montana or equivalent institution as provided by section 75-2515. The professional certificate may be endorsed for elementary and/or secondary instruction, and for specified subject fields according to the academic and professional courses offered by the applicant and in accordance with the rules and regulations established by the state board of education for such endorsement.
- Class 2. Standard certificate. The standard certificate may be issued to applicants who have completed a four-year teacher education program and who have been awarded a bachelor's degree by a unit of the university of Montana or equivalent institution as provided by section 75-2515. The standard certificate may be endorsed for elementary and/or secondary instruction, and for specified subject fields according to the academic and professional courses offered by the applicant and in accordance with the rules and regulations established by the state board of education for such endorsement.
- Class 3. Administrative and supervisory certificates. A person shall be qualified to be a superintendent of schools in any school district when he shall hold a certificate qualifying him to teach in the school or schools thereof, and in addition shall have such other qualifications with reference to special preparation and experience as the state board of education may from time to time prescribe.

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A person shall be qualified to be a principal or supervisor of or in any school when he shall hold a certificate qualifying him to teach in such school, and in addition shall have such other qualifications with reference to special training and experience as the state board of education may from time to time prescribe.

When any person shall establish his qualifications to be a superintendent, principal or supervisor, as aforesaid in compliance with the rules and regulations prescribed by the state board of education, the state superintendent of public instruction may certify him as being qualified to be such superintendent, principal or supervisor, as the case may be. Contracts with principals, supervisors or superintendents shall not be valid unless such persons shall be qualified by holding the appropriate and required certificate.

- Class 4. Vocational, recreational, and adult education certificates. The state superintendent of public instruction shall have authority to issue special certificates to vocational, recreational, and adult education teachers who present such qualifications of training and experience as meet the requirements of the United States office of education or the special needs of the several vocational, recreational and adult education fields, and comply with the rules and regulations approved and adopted by the state board of education.
- Class 5. Provisional certificate. The provisional certificate may be issued to applicants who provide evidence satisfactory to the state board of education of intent to qualify themselves in the future for the Class 1 professional certificate or the Class 2 standard certificate, and who have completed the following minimum of academic and/or professional training at a unit of the university of Montana or equivalent institution as provided by section 75-2515:
- a. For elementary endorsement. Applicants shall have completed a minimum of two years in a teacher education program.
- b. For secondary endorsement. Applicants shall have completed a four-year college program or its equivalent and shall hold a bachelor's degree. The provisional certificate endorsed for secondary instruction may also be endorsed for specified subject fields according to the academic and/or professional courses offered by the applicant.

Certificates shall be endorsed in accordance with the rules and regulations established by the state board of education for such endorsement.

For purposes of evaluating the qualifications of applicants for teaching certificates, a year means that instructional period consisting of three quarters or two semesters or other terms which are recognized as an academic year by any unit of the university of Montana or equivalent institution.

History: En. Sec. 6, Ch. 142, L. 1949; amd. Sec. 1, Ch. 187, L. 1959.

Collateral References

Schools and School Districts—130. 78 C.J.S. Schools and School Districts § 164.

# 75-2517. Repealed—Chapter 187, Laws of 1959.

Repeal

This section (Sec. 7, Ch. 142, L. 1949), relating to kinds of certificates for teach-

ing, was repealed by Sec. 2, Ch. 187, Laws 1959.

75-2518. Outstanding certificates for teaching. No provisions of this act shall affect or impair the validity of any certificate for teaching in force on July 1, 1959, or the rights and privileges of the holders by virtue thereof, save that any certificate may be suspended or revoked for any of the causes and by the procedures specified by law.

Any holder of an elementary school standard certificate issued prior to July 1, 1959, under previous statute and in force on July 1, 1959, shall be eligible for renewal of such certificate in accordance with the rules and regulations of the state board of education until the holder qualifies for the Class 2 standard certificate as provided in section 75-2516, as amended.

History: En. Sec. 7, Ch. 142, L. 1949; amd. Sec. 3, Ch. 187, L. 1959.

### Collateral References

Schools and School Districts 132. 78 C.J.S. Schools and School Districts 165.

75-2519. Recording of certificates. No person shall be accounted a qualified teacher within the meaning of this act until such person has filed for record with the county superintendent of schools of the county where such person intends to teach, a certificate or certified copy thereof, authorizing such person to teach school in the state.

History: En. Sec. 8, Ch. 142, L. 1949.

75-2520. Duration and renewal of certificates. All certificates shall bear the date of the issue and, with the exception of the emergency authorization to teach which shall be valid for one year, and the provisional certificate which shall be valid for two years, shall expire after the first issue to any person five years from July 1 preceding such date of issue and may be renewed for periods of not more than five (5) years in accordance with rules and regulations adopted by the state board of education.

History: En. Sec. 9, Ch. 142, L. 1949; amd. Sec. 1, Ch. 91, L. 1951; amd. Sec. 4, Ch. 187, L. 1959.

### Collateral References

Schools and School Districts = 130. 78 C.J.S. Schools and School Districts § 166.

75-2521. Fees for certificates for teaching. For the issuance, renewal or extension of a certificate to teach, each applicant for such certificate shall pay a fee of one dollar (\$1.00) for each year that the certificate is in force. Such fee shall be paid to the state superintendent of public instruction, who shall deposit such fees with the state treasurer and report each month to the state auditor the amount of fees collected. The state auditor shall credit all such fees to the division of certification of the state department of public instruction.

History: En. Sec. 10, Ch. 142, L. 1949.

### Collateral References

Schools and School Districts = 130. 78 C.J.S. Schools and School Districts § 162.

75-2522. Emergency authorization to teach. When regularly certified teachers cannot be secured, the state superintendent of public instruction

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may, in accordance with the rules and regulations approved and adopted by the state board of education for such emergencies, issue an emergency authorization to teach to any person who has previously held a valid certificate or who meets the standards of preparation prescribed by the state board of education for and during such emergencies. Such emergency authorization to teach shall indicate the grades or the subjects or fields in which the holder is authorized to teach. Emergency authorizations to teach shall be valid for one year and may be renewed only in accordance with the rules and regulations approved and adopted by the state board of education.

History: En. Sec. 5, Ch. 187, L. 1959.

# CHAPTER 26

### TEACHERS' INSTITUTES AND SUMMER SCHOOLS

(Repealed-Section 1, Chapter 26, Laws of 1961)

75-2601 to 75-2608. (1105 to 1112) Repealed.

These sections (Secs. 8 to 10, pp. 132, 133, L. 1897; Secs. 1, 2, Ch. 60, L. 1905; Secs. 1, 2, Ch. 148, L. 1907; Secs. 1000 to

1007, Ch. 76, L. 1913) relating to teachers' institutes and summer schools, were repealed by Sec. 1, Ch. 26, Laws 1961.

# CHAPTER 27

### TEACHERS' RETIREMENT SYSTEM

Section 75-2701. Definitions.

75-2702. Name and date of establishment.

75-2703. Administration.

75-2704. Membership.

Membership application and creditable service. 75-2705. 75-2706. University teachers, when allowed benefits of act.

75-2707. Benefits.

75-2708. Management of funds.

75-2709. Method of financing.

75-2710. Duties of employer.

75-2711. Collection of contributions by members.

75-2712. Provision for discontinuing former retirement system. 75-2713. Exemption from taxation, execution and assignment.

75-2714. Protection against fraud.

75-2715. Limitation on membership of other systems.

75-2716. Guarantee by state.

**75-2701. Definitions.** The following words and phrases used in this act shall have the following meanings unless a different meaning is plainly required by the content:

- (1) "Retirement system" shall mean the teachers' retirement system of the state of Montana provided for in section 75-2702.
- "Retirement board" shall mean the retirement board provided by section 75-2703 to administer the retirement system.
- "Employer" shall mean the state of Montana or the board of trustees of any school district employing teachers subject to the provisions of this act; or other agency of and within the state by which the teacher is paid.

- (4) "Teacher" shall mean any teacher in the public elementary and high schools of the state, and the university of Montana, as constituted in accordance with section 75-401, including all kindergarten teachers in the public schools, and shall include any school librarian or physical training teacher, principal, vice-principal, supervisor, superintendent, county superintendent of schools, and any other member of the teaching or professional staff of any public elementary or high school of this state, and any administrative officer or member of the instructional or scientific staff of the university of Montana; provided that no person shall be deemed a teacher within the meaning of this act who is not so employed for full time outside vacation periods. The word "teacher" shall also include any person employed in the office of or by the superintendent of public instruction in the performance of duties pertaining to instructional services. In all cases of doubt, the retirement board shall determine whether any person is a teacher as defined in this act.
- (5) "Member" shall mean any person included in the membership of the system as provided in section 75-2704.
- (6) "Service" shall mean service as a teacher as described in subsection (4) of this section and paid for by an employer as described in subsection (3) of this section.
- (7) "Prior service" shall mean service as "teacher" or in a similar capacity outside of the state, rendered prior to the date of establishment of the system, and in case of teachers in the university of Montana rendered prior to September 1, 1939, for which credit is allowable as provided in section 75-2705; provided, further, that any teacher, mustered into or serving in the military forces of the United States government during the period of war, shall receive "prior service credit" for such period of service.
- (8) "Membership service" shall mean service as a teacher rendered while a member of the retirement system.
- (9) "Creditable service" shall mean prior service plus membership as provided in section 75-2705.
- (10) "Beneficiary" shall mean any person in receipt of a pension, annuity, a retirement allowance, or other benefit as provided by this act.
- (11) "Regular interest" shall mean interest at four per centum per annum compounded annually, or at such other rate as may be set by the retirement board in accordance with subsection (2) of section 75-2708.
- (12) "Accumulated contributions" shall mean the sum of all the amounts deducted from the compensation of a member or paid by a member as provided for in sections 75-2705 and 75-2709, and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed to provide a benefit at the time of retirement. Interest at the rate of three-fourths the regular rate shall be computed and credited to the pension accumulation fund when withdrawn for any other purpose subsequent to July 1, 1945.
- (13) "Earnable compensation" shall mean the full rate of the compensation, pay or salary that would be payable to a teacher if he worked the full normal working time except that any compensation in excess of

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six thousand dollars (\$6,000) per annum, shall not be used for the purpose of this system provided that any teacher who received a salary or compensation in excess of five thousand dollars (\$5,000) per annum subsequent to July 1, 1957, may use such salary or that portion of it not in excess of six thousand dollars (\$6,000) as a basis of compensation for the purpose of this system if (a) he contributes five per cent (5%) of the excess of such salary subsequent to July 1, 1957, over five thousand dollars (\$5,000) and not exceeding six thousand dollars (\$6,000) to his individual account in the annuity savings fund and (b) he contributes three and one-half per cent ( $3\frac{1}{2}\%$ ) of the excess of his salary subsequent to July 1, 1957, over five thousand dollars (\$5,000) and less than six thousand dollars (\$6,000) to the pension accumulation fund. In cases where compensation includes maintenance, the retirement board shall fix the value of that part of the compensation not paid in money.

- (14) "Average final compensation" shall mean the average annual compensation, pay or salary on which the five per cent (5%) contribution has been made by a member during any three (3) consecutive years as a teacher.
- (15) "Medical board" shall mean the board of physicians provided for in section 75-2703.
- (16) "Annuity" shall mean payments for life derived from the accumulated contributions of a member as provided in this act. All annuities shall be paid in equal monthly installments.
- (17) "Pension" shall mean payments for life derived from money provided by the employer as defined in this act. All pensions shall be paid in equal monthly installments.
  - (18) "Retirement allowance" shall mean the annuity plus the pension.
- (19) "Annuity reserve" shall mean the present value of all payments to be made on account of a member's annuity granted under the provisions of this act, computed upon the basis of such mortality tables as shall be adopted by the retirement board and regular interest.
- (20) "Pension reserve" shall mean the present value of all payments to be made on account of a pension granted under the provisions of this act, computed on the basis of such mortality tables as shall be adopted by the retirement board with regular interest.
- (21) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the retirement board and regular interest.
- (22) "Former retirement system" shall mean the retirement system established under sections 1113 to 1132 inclusive, of the Revised Codes of Montana, 1935.

History: En. Sec. 1, Ch. 87, L. 1937; subd. (7) amd. Sec. 1, Ch. 202, L. 1939; amd. Sec. 1, Ch. 215, L. 1939; amd. Sec. 1, Ch. 137, L. 1945; amd. Sec. 1, Ch. 28, L. 1949; amd. Sec. 1, Ch. 216, L. 1953; amd. Sec. 1, Ch. 235, L. 1959.

NOTE.—Earlier act was Ch. 95, Laws 1915 appearing with amendments as Secs. 1113 to 1132, R. C. M. 1935, now repealed.

### Cross-Reference

Reciprocity of credits between public employees' retirement system and teachers' retirement system, secs. 68-1317 to 68-1320.

# Constitutionality

The provisions of the 1945 amendment (that part of subsec. (12) requiring interest to be credited to pension accumula-

tion fund) which deprived a withdrawing member of the interest to which she would have been entitled under the law prior to amendment were violative of Art. I, sec. 10 of the United States Constitution and Art. III, sec. 11 of the Montana Constitution, as impairing the plaintiff's contractual rights. Clarke v. Ireland, 122 M 191, 199 P 2d 965, 970.

### Contractual Nature of Rights

The Teachers' Retirement Act is one providing for payments of annuity rather than a pension and creates a contractual annuity. Clarke v. Ireland, 122 M 191, 199 P 2d 965, 969.

### Collateral References

Schools and School Districts 146.
78 C.J.S. Schools and School Districts
231 et seq.
40 Am. Jur. 973, Pensions, § 17.

75-2702. Name and date of establishment. A state teachers' retirement system is hereby established for the teachers of the state of Montana, and placed under the management of a "retirement board" for the payment of retirement allowances and other benefits under the provisions of this act. The retirement system herein created shall have such powers and privileges of a corporation as may be necessary to carry into effect the provisions of this act. The retirement system so created shall begin operation as of the first day of September, 1937, except that the state's contribution to the pension accumulation fund shall begin with the fiscal year, July 1, 1937; and such system shall be known as "The Teachers' Retirement System of the State of Montana," and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held in trust for the purpose for which received.

History: En. Sec. 2, Ch. 87, L. 1937.

- 75-2703. Administration. (1) The general administration and the responsibility for the proper operation of the retirement system and for making effective the provisions of this act are hereby vested in a retirement board. Subject to the limitations of this act the retirement board shall from time to time establish rules and regulations for the administration and transaction of the business of the retirement system and shall perform such other functions as are required for the execution of this act. The membership of the retirement board shall consist of five (5) persons as follows:
  - (a) The superintendent of public instruction.
  - (b) Two (2) persons from the teaching profession.
  - (e) Two (2) persons who shall be representatives of the public.

The two (2) members chosen from the teaching profession shall be known as teacher members, and shall be members of the retirement system.

- (2) The members of the board of teachers' retirement system shall be appointed by the governor within thirty (30) days after this act takes effect and shall serve for terms of four (4) years, provided, however, that those first appointed after this act takes effect other than the superintendent of public instruction shall serve for terms respectively of one (1), two (2), three (3) and four (4) years.
- (3) If a vacancy occurs in the office of a member of said board, the vacancy may be filled by the governor for the unexpired term.
- (4) Each member of the retirement board created by this act shall take and subscribe the oath prescribed by article XIX, section 1 of the

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constitution of the state of Montana, and such oath shall be filed in the office of the secretary of state.

- (5) A majority of the members of the retirement board shall constitute a quorum for the transaction of any business.
- (6) The members of the retirement board shall serve without compensation except that the members thereof, excluding superintendent of public instruction, shall receive a per diem fee of ten dollars (\$10.00) each for each day in actual attendance at the meetings of said board or in the execution of their duties as members of said board; provided, however, that in no instance shall any such member of said board receive as said per diem fee, a sum in excess of one hundred dollars (\$100.00) in any one (1) year; and the members of said board shall be allowed their actual and necessary traveling expenses while performing their duties as members of said board, which shall be paid quarterly upon proper vouchers from the expense fund hereinafter named.
- (7) The retirement board shall elect from its membership a chairman, and shall appoint a secretary who may be, but need not be one (1) of its members. The secretary shall give bond in such amount and with such sureties as the board may require.
- (8) The retirement board shall have power to employ and to secure the services of such technical and administrative employees as may be necessary for the transaction of the business of the retirement system. The compensation of all persons engaged by the retirement board shall be fixed by the board and all other expenses of the board necessary for the proper operation of the retirement system shall be paid at such rates and in such amounts as the retirement board shall approve.
- (9) The retirement board shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the system. It shall keep a record of all of its proceedings which shall be open to public inspection. It shall publish biennially on or before the first day of January wherein the legislative assembly shall meet a report showing in detail the fiscal transactions of the retirement board for the two (2) years ending on the preceding thirtieth day of June, the amount of the accumulated cash and securities of the system and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the retirement system. The board shall submit said report to the governor and shall furnish copies thereof to the heads of the various departments and to the legislative assembly.

# Legal Adviser

(10) The attorney general of the state of Montana shall be the legal adviser of the retirement board.

### Medical Board

(11) The retirement board may designate a medical board to be composed of three physicians not eligible to participate in the retirement

system. If required, other physicians may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under the provisions of this act, shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the retirement board its conclusions and recommendations upon all the matters referred to it.

# Actuary

- (12) The retirement board shall designate an actuary who shall be the technical adviser of the retirement board on matters regarding the operation of the funds created by the provisions of this act and shall perform such other duties as are required in connection therewith.
- (13) As soon after the establishment of the system as the board may deem it necessary, the board with the assistance of its actuary shall make such investigation of the mortality, service and compensation experience of the members of the system as he shall recommend and the retirement board shall authorize, for the purpose of determining upon the proper mortality and service tables to be prepared and submitted to the retirement board for adoption. On the basis of such investigation the said retirement board shall adopt such tables and such rates as are required by section 75-2708.
- (14) It shall be the duty of the retirement board to adopt for the retirement system such mortality, service or other tables as shall be deemed necessary and to certify such rates of contribution as are payable by the state as hereinafter provided. As an aid to the board in certifying the annual rates of payment to be made by the state under the provisions of this act the board shall have prepared by an actuary an annual valuation of the assets and liabilities of the funds of the system. In the year 1940 and at least once in each five (5) year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the retirement system, and shall make a valuation of the assets and liabilities of the funds of the system, and taking into account the result of such investigation and valuation the board shall modify such mortality, service and other tables and shall fix and determine rates of contribution payable on account of members by the state under the provisions of this act, and said board shall have the power and authority at any time the same may be found necessary to readjust and redetermine such rates of contribution to the end that the retirement system shall be kept at all times upon a sound financial and actuarial basis, and that the contributions shall be the actuarial equivalent of the benefits provided and paid.

History: En. Sec. 3, Ch. 87, L. 1937; amd. Sec. 1, Ch. 157, L. 1953.

- **75-2704. Membership.** (1) The membership of the retirement system shall consist of the following:
- (a) All persons who were teachers in the public elementary and high schools of the state during the school year nineteen hundred and thirty-six

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to nineteen hundred and thirty-seven, and who continue to be teachers shall become members as of the date of establishment except that any such teacher may notify the board on or before the thirtieth day of November, nineteen hundred and thirty-seven, in such form as the board may prescribe, that he does not desire to become a member, and in such case the board shall exclude him from the membership.

- (b) All persons who were teachers in the university of Montana during the school year nineteen hundred and thirty-eight to nineteen hundred and thirty-nine, and who continue to be teachers shall become members as of the first day of September, nineteen hundred and thirty-nine, except that any such teacher may notify the board on or before the thirtieth day of November, nineteen hundred and thirty-nine, in such form as the board may prescribe, that he does not desire to become a member, and in such case the board shall exclude him from the membership.
- (c) All persons who become teachers or re-enter the teaching service in the public elementary or high schools on or after the first day of September, nineteen hundred and thirty-seven, and all persons who become teachers or re-enter the teaching service in the university of Montana on or after the first day of September, nineteen hundred and thirty-nine, shall become members of the retirement system by virtue of their appointment as teachers.
- (d) A teacher in the public elementary or high schools who shall elect not to become a member as provided in subdivision (a) of this subsection, may thereafter apply for and be admitted to membership.
- (e) A teacher in the university of Montana who shall elect not to become a member as provided in subdivision (b) of this subsection may thereafter apply for and be admitted to membership.
- (2) The retirement board may in its discretion deny the right to become members to any class of teachers whose compensation is only partly paid by the employer, or who are serving on a temporary or any other than a per annum basis, and it may also in its discretion make optional with members in any such class their individual entrance into membership.
  - (3) The membership of any person in the retirement system shall cease:
- (a) If he is a member of any other retirement or pension system supported wholly or in part by funds of the United States government, or any agency thereof, or political subdivision thereof and he is receiving credit in such other system for service, it being the purpose of this subsection to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds, and no person shall receive both such credits under any circumstances. Any member of the retirement system who, because of his employment, shall be required to become a member of any such other system, shall be considered, solely for the purpose of this act, as permanently separated from state service.

For the purpose of this subsection, teachers who merely are receiving pensions or retirement allowances, or other payments, from any source whatever, on account of service rendered to some other agency, shall not be considered, because of such receipt, members of any other retirement or pension system.

- (b) If he withdraws his accumulated contributions or retires on a pension or dies, but not otherwise, except that the membership of a teacher who has not withdrawn his contributions and who has not had sufficient service to be eligible for disability retirement shall not be canceled, provided the member shall prove to the satisfaction of the retirement board that absence from service was caused by personal illness constituting disability, or service in the armed forces of the United States which includes all members of the army, the navy, the marine corps, and the coast guard, or service in the American Red Cross and merchant marine during time of war, and provided any member with ten (10) or more years of service, whose service is discontinued otherwise than by death or retirement, shall have the right to elect within one (1) year after such termination of service, and without right of revocation, whether to allow his accumulated contributions to remain in the retirement fund. Upon the qualification for retirement by reason of age or disability of a member who has elected to allow his accumulated contributions to remain in the retirement fund, he shall receive a retirement allowance in accordance with the provisions of the Teachers' Retirement Act.
- (4) It shall be the duty of each board of school trustees and of the chief executive of each institution, station or division of the university of Montana employing teachers subject to the provisions of this act to submit to the retirement board a statement showing the name, title, compensation, duties, date of birth, and length of service of each teacher employed in such schools and such other information regarding such teachers as the retirement board may require.

History: En. Sec. 4, Ch. 87, L. 1937; References amd. Sec. 2, Ch. 215, L. 1939; amd. Sec. 1, Ch. 15, L. 1945; amd. Sec. 2, Ch. 28, L. 1949; amd. Sec. 2, Ch. 216, L. 1953.

- 75-2705. Membership application and creditable service. (1)such rules and regulations as the retirement board shall adopt, each teacher upon becoming a member shall file with the retirement board an application showing his date of birth, and such other necessary information as the retirement board may require for the proper operation of the retirement system. If a member was a teacher in the public elementary or the high schools during the school year immediately preceding the establishment of the retirement system, and becomes a member before the first day of September, nineteen hundred and thirty-eight, and if a member was a teacher in the university of Montana during the school year nineteen hundred and thirty-eight to nineteen hundred and thirty-nine, and becomes a member before the first day of September, nineteen hundred and forty, he shall itemize on such application all services as a teacher rendered prior to the date of establishment, including service in a similar capacity in other states rendered by him prior to the first day of September, nineteen hundred and thirty-seven, for which he claims credit.
- (2) Any member who was a teacher in the university of Montana during the school year nineteen hundred and thirty-eight to nineteen hundred thirty-nine and becomes a member before the first day of September, nineteen hundred and forty, shall be allowed upon application to the retire-

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ment board, credit for prior service for either the school year nineteen hundred and thirty-seven to nineteen hundred thirty-eight or the school year nineteen hundred thirty-eight to nineteen hundred thirty-nine, or for both of these years, provided (a) that he was a teacher in the university of Montana during the school year or years for which he makes application for such credit; and (b) that he contributes to the retirement fund an amount equal to the contribution that would have been necessary if he had been a member during the school year or years for which he makes application for such credit. The amount contributed by a member in accordance with this subsection shall be credited to his individual accounts in the annuity savings fund.

- (3) The retirement board shall fix and determine by appropriate rules and regulations how much service in any year is the equivalent of a year of service, but in computing such service or in computing average compensation, it shall credit no period of more than a month's duration, during which a member was absent without pay, nor shall more than one year of service be credited for all service in any school year.
- (4) Subject to the above restrictions and to such other rules and regulations as the retirement board shall adopt, said board shall verify as soon as practicable the statement of service submitted.
- Upon verification of the statement of service submitted, the retirement board shall issue to each member who was a teacher in the public elementary or the high schools during the school year immediately preceding the date of establishment of the retirement system and becomes a member before the first day of September, nineteen hundred and thirtyeight, and to each member who was a teacher in the university of Montana during the school year nineteen hundred and thirty-eight to nineteen hundred and thirty-nine, and becomes a member before the first day of September, nineteen hundred and forty, a prior service certificate certifying to the aggregate length of prior service as a teacher and to the aggregate length of such service in a similar capacity outside of the state for which the member is entitled to credit. In such prior service certificate, the member shall be credited up to the nearest number of years and months with all service as a teacher prior to September 1, 1937, and with all service not exceeding ten years in a similar capacity in other states, and with all services for which credit is allowable as provided in subsections (2), (8) and (9) of this section.
- (6) So long as membership continues, a prior service certificate shall be final and conclusive for retirement purposes as to such service unless thereafter modified by the retirement board upon application made by the member within one year after the date of issuance or modification of a prior service certificate or upon discovery by the retirement board of an error or fraud.
- (7) At retirement the creditable service of a member on which his retirement allowance shall be based, shall consist of the membership service rendered by him as a member and also if he has a prior service certificate, which is in full force and effect, the service certified on his prior service certificate.

- (8) Any teacher who was employed during the school year nineteen hundred forty-seven and nineteen hundred forty-eight or who was not continuously absent without pay for a period of more than three years between the years nineteen thirty-seven and nineteen forty-seven may become a member of the retirement system and shall be allowed credit for prior service provided (a) that he made application to the retirement board prior to the thirtieth day of June 1950; and (b) that he contributes to the retirement fund an amount equal to the contribution that would have been necessary if he had been a member during the school year or years for which he makes application for such credit, or if the full amount is not paid then credit shall be given for the years covered by the amount paid. The amount contributed by a member in accordance with this subsection shall be credited to his individual account in the annuity savings fund.
- (9) Any teacher who has become employed as a teacher in Montana subsequent to September first nineteen hundred and thirty-seven may receive credit for service for out-of-state teaching employment provided (a) that he contributes to the retirement fund five per cent (5%) of the salary for each year claimed based on the first year's salary earned in Montana; and (b) that the maximum number of such years shall not exceed ten (10) and that a year out-of-state employment shall be equivalent to one year membership service in Montana, and (c) that payment of such contribution shall be made in a lump sum or in installments as agreed between such teacher and the retirement board.
- (10) Any teacher who has been employed for at least ten (10) years and who has been a contributing member for at least five (5) consecutive years of the ten (10) and who has not at the time of retirement received credit for all Montana prior service rendered before September 1, 1937, may apply for and receive credit for such prior service if proper certification of such service is furnished.

History: En. Sec. 5, Ch. 87, L. 1937; amd. Sec. 3, Ch. 215, L. 1939; amd. Sec. 3, Ch. 28, L. 1949; amd. Sec. 3, Ch. 216, L. 1953.

### Collateral References

Services included in computing period of service for purpose of teachers' retirement benefits. 2 ALR 2d 1033.

75-2706. University teachers, when allowed benefits of act. Members who are teachers in the university of Montana shall not be entitled to the benefits as provided for in section 75-2707 prior to July 1, 1941; but shall be entitled to such benefits thereafter.

History: En. Sec. 4, Ch. 215, L. 1939.

- 75-2707. Benefits. (1) Superannuation retirement benefit. (a) Any member who has completed ten years of creditable service, the last ten years of which shall have been in this state, and who has attained the age of sixty may retire from service, if he files with the retirement board his written application setting forth the fact of his retirement.
- (b) That from and after the passage and approval of this act, any member in service who has attained the age of seventy years, during any school year shall be retired by said retirement board on the first day of September following his or her seventieth birthday.

- (2) Allowance on superannuation retirement. Upon superannuation retirement a member shall receive a superannuation retirement allowance which shall consist of:
- (a) An annuity which shall be actuarial equivalent of his accumulated contributions at the time of his retirement, and
- (b) A pension of one-quarter of his average final compensation provided his creditable service is at least thirty-five years, otherwise, a pension of one one-hundred fortieth (1/140) of his average final compensation multiplied by the number of years of his creditable service, and
- (c) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to one one-hundred fortieth (1/140) of his average final compensation multiplied by the number of years of service certified to him on his prior service certificate.
- (d) The minimum annual retirement allowance for a member who has completed thirty years service and who retired after September 1, 1937, and before June 30, 1949, shall be nine hundred dollars (\$900.00), and the minimum retirement allowance for a member who retired after September 1, 1937, and before June 30, 1949, but whose service is less than thirty years shall receive a minimum retirement allowance based on the proportionate amount of nine hundred dollars (\$900.00) that his service bears to thirty years of service.
- (e) The minimum annual retirement allowance for a member who has completed thirty-five years of service and who has attained the age of sixty-five and who retires after June 30, 1949, shall be nine hundred dollars (\$900.00).
- (f) In the event a member retired on a superannuation allowance has not received more than three retirement payments prior to death, the beneficiary of the member shall receive a refund of the difference between the total paid and the amount of the accumulated contributions.
- (3) Disability retirement benefit. Upon the application of a member in service or of his employer, any member who has had ten or more years of creditable service in the state of Montana may be retired by the retirement board not less than thirty and not more than ninety days next following the date of filing such applications on a disability retirement allowance, provided that the medical board after a medical examination of such member shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

If the applicant for disability retirement was prevented because of the disability from making application at the time of the time of the commencement of disability, the retirement board shall grant the disability retirement upon the proper application for disability retirement allowance and make payments retroactive to the thirtieth day after the date of commencement of disability.

(4) Allowance on disability retirement. Upon retirement for disability a member shall receive a superannuation allowance if he is eligible for a superannuation allowance; otherwise he shall receive a disability retirement allowance which shall consist of:

- (a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement, and
- (b) A pension which, together with his annuity, shall provide a total retirement allowance equal to ninety per centum (90%) of one-seventieth (1/70) of his average final compensation multiplied by the number of years of his creditable service, if such retirement allowance exceeds one-quarter ( $\frac{1}{4}$ ) of his average final compensation; otherwise, a pension which, together with his annuity, shall provide a total retirement allowance equal to one-quarter ( $\frac{1}{4}$ ) of his average final compensation, provided, however, that no such allowance shall exceed ninety per centum (90%) of one-seventieth (1/70) of his average final compensation multiplied by the number of years which would be creditable to him were his service to continue until the attainment of the minimum age for superannuation retirement.
- (c) In the event payments made to a person retired because of disability do not equal the amount of his accumulated contributions prior to his death the difference between the amount paid and the total of the accumulated savings account of said member shall be paid to the beneficiary.
- (5) Re-examination of beneficiaries retired on account of disability. Once each year during the first five (5) years following the retirement of a member on disability retirement allowance, and once in every three year period thereafter the retirement board may, and upon his application shall, require a disability beneficiary who has not yet attained the age of sixty to undergo a medical examination by the medical board or a physician or physicians designated by the medical board, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon. Should any disability beneficiary who has not yet attained the age of sixty refuse to submit to at least one medical examination in any year by the medical board, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his pension may be revoked by the retirement board.
- that any disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation and should the retirement board concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be later changed the amount of his pension may be further modified; provided that the new pension shall not exceed the amount of the pension originally granted, nor an amount which when added to the amount earnable by the beneficiary, together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired shall not become a member of the retirement system while receiving a reduced benefit.
- (7) Should a disability beneficiary under age sixty be restored to active service at a compensation not less than his average final compensation his retirement allowance shall cease; he shall again become a member

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of the retirement system and contribute thereto. Any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect and in addition upon his subsequent retirement he shall be credited with all his service as a member, and should he be restored to active service on or after the attainment of the age of fifty-five years, his pension upon subsequent retirement shall not exceed the pension that he would have received had he remained in service during the period of his previous retirement nor the sum of the pension which he was receiving immediately prior to his last restoration to service and the pension that he would have received on account of his service since his last restoration had he entered service at that time as a new entrant.

- (8) (a) A member who withdraws from service or ceases to be a teacher for any cause other than death or retirement shall be paid only the amount contributed by the member to his annuity savings account after first deducting any unpaid annual membership fees of said member.
- (b) Should a member die before retirement only the amount of the member's contributions to his annuity savings fund account after deducting any unpaid annual membership fees shall be paid to his estate or such person as he shall have nominated by written designation duly executed and filed with the retirement board.
- (c) In lieu of benefits provided in (b) above, if the deceased member had qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. Said monthly life annuity to be based on the beneficiary's attained age at the time of the deceased member's death and to be calculated from an amount equal to the required reserve for the deceased member's creditable service, together with the deceased member's accumulated contributions.

If the beneficiary so electing be the surviving spouse of the deceased member, such beneficiary shall receive, in addition to the monthly annuity, provided the deceased member was actively engaged as a teacher in the state of Montana within one (1) year prior to his death, the sum of fifty dollars (\$50.00) per month for each child from the pension accumulation fund for the support of the minor child or children of the deceased member until such child or children reach his or their eighteenth birthday, but such payments shall not exceed in any one (1) month the sum of one hundred dollars (\$100.00).

(9) Optional benefits. With the provision that no optional selection shall be effective in case a beneficiary dies within thirty days after retirement, and that such a beneficiary shall be considered as an active member at the time of his death; until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement or disability allowance payable throughout life as hereinabove provided, or he may on retirement elect to receive the actuarial equivalent at that time of his retirement or disability allowance in a lesser retirement allowance payable throughout life with the provision that:

- Option 1. If he dies before he has received in payment of his annuity the amount of his accumulated contributions as they were at the time of his retirement, the balance shall be paid to his legal representative or to such person as he shall nominate by written designation duly acknowledged and filed with the retirement board; or
- Option 2. Upon his death, his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement; or

Option 3. Upon his death, one-half of his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement; or

Option 4. Some other benefit or benefits shall be paid either to the member or to such person or persons as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement, provided such other benefit or benefits, together with the lesser retirement allowance shall be certified by the actuary to be of equivalent actuarial value to his retirement allowance and shall be approved by the retirement board.

History: En. Sec. 6, Ch. 87, L. 1937; amd. Sec. 2, Ch. 137, L. 1945; amd. Sec. 4, Ch. 28, L. 1949; amd. Sec. 4, Ch. 216, L. 1953; amd. Sec. 1, Ch. 160, L. 1955; amd. Sec. 1, Ch. 270, L. 1959.

### Constitutionality

The provisions of the 1945 amendment (that part of subsec. (8) providing that withdrawing member shall be paid only amount contributed) which deprived a withdrawing member of the interest to which she would have been entitled under

the law prior to amendment were violative of Art. I, sec. 10 of the United States Constitution and Art. III, sec. 11 of the Montana Constitution, as impairing the plaintiff's contractual rights. Clarke v. Ireland, 122 M 191, 199 P 2d 965, 970.

# Compulsory Retirement

Motion and rules and regulations adopted by school trustees requiring the retirement of all teachers upon arriving at the age of sixty-five years were void. Abshire v. School District No. 1, 124 M 244, 220 P 2d 1058.

- 75-2708. Management of funds. (1) The retirement board shall be the trustees of the several funds created by this act and the same shall be invested and reinvested by the state board of land commissioners as part of the long term investment fund.
- (2) The retirement board annually shall allow regular interest on the average amount for the preceding year in each of the funds with the exception of the expense fund. The amount so allowed shall be due and payable to said funds and shall be annually credited thereto by the retirement board from interest and other earnings on the moneys of the retirement system. Any additional amount required to meet the interest on the funds of the retirement system shall be paid by the state during the ensuing year and any excess of earning over such amount required shall be deductible from the amounts to be contributed by the state during the ensuing year. Regular interest shall mean such per centum rate to be compounded annually as shall be determined by the retirement board on the basis of the interest earnings of the system for the preceding year and of the probable earnings to be made, in the judgment of the board, during the immediate future.

- (3) The state treasurer shall be the custodian of the several trust funds and of the securities in which said funds are invested. All payments from said funds shall be made by him only upon vouchers signed by two (2) persons designated by the retirement board. A duly attested copy of a resolution of the retirement board designating such persons and bearing on its face specimen signatures of such person shall be filed with the treasurer as his authority for making payments upon such vouchers. No voucher shall be drawn unless it has previously been authorized by resolution of the retirement board.
- (4) Except as herein provided no member of the retirement board and no employee of the board shall have an interest, direct or indirect, in the gains or profits of any investment of funds as provided herein, nor as a member of the board directly or indirectly, receive any pay or emolument for his services. No member of the said board or employee thereof shall directly or indirectly for himself or as an agent in any manner use the funds or deposits of the retirement system except to make such current and necessary payments as are authorized by the retirement board; nor shall any member or employee of the board become an endorser or surety or in any manner an obligor for moneys loaned by or borrowed from the retirement board.
- (5) The board may in its discretion transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

History: En. Sec. 7, Ch. 87, L. 1937; amd. Sec. 3, Ch. 176, L. 1953; amd. Sec. 5, Ch. 216, L. 1953.

### Compiler's Note

This section was amended twice in 1953 by section 3 of Ch. 176, Laws 1953 and section 5 of Ch. 216, Laws 1953. Both acts became effective July 1, 1953 since neither specified an effective date. Chapter 176 was approved March 4, 1953 while Ch. 216 was approved March 5, 1953. Apparently, Chapters 176 and 216 by their contents are not in conflict with each other so as to make it impossible for both of them to become effective. Therefore, the compiler has incorporated the changes made by both chapters.

# Investments in Emergency Relief Warrants

Under Ch. 87, Laws 1937, 75-2701 et seq. being a revision of all prior laws relating to the teachers' retirement fund, the retirement board has supervision over the investment of the funds mentioned therein. and it may in its discretion invest such funds in emergency relief warrants issued under Sec. 2, Ch. 85, Laws 1937 (omitted). Kraus v. Riley, 107 M 116, 122, 80 P 2d 864.

### Collateral References

Officers ⊕36(1). 67 C.J.S. Officers § 38 et seq.

- 75-2709. Method of financing. There are hereby created and established an "annuity savings fund" and "annuity reserve fund," a "pension accumulation fund," a "pension reserve fund" and an "expense fund," into which funds all of the assets of the retirement system shall be credited according to the purpose for which they are held as hereinafter prescribed.
- (1) Annuity savings fund. The annuity savings fund shall be a fund in which shall be accumulated the contributions from the compensation of members to provide for their annuities. Contributions to and payments from the annuity savings fund shall be made in the following manner:

- (a) Each employer shall deduct from the compensation of each member on each and every payroll of such member for each and every payroll period subsequent to the date on which such member became a member an amount equal to five per centum (5%) of such member's earnable compensation, but no employer shall make any deductions for annuity purposes from the compensation of a member who has attained the age of sixty and rendered thirty-five years of creditable service if such a member elects not to contribute.
- (b) In determining the amount earnable by a member in a payroll period, the retirement board may consider the rate of compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deductions from compensation for any period less than a full payroll period if a teacher was not a member on the first day of the payroll period, and to facilitate the making of deductions, it may modify the deduction required of any member by such an amount as shall not exceed one-tenth (1/10) of one per centum (1%) of the annual compensation upon the basis of which said deduction is to be made.
- (c) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt in full for his salary or compensation; and payment of salary or compensation less said deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment except as to the benefits provided by this act.
- (d) Notwithstanding the preceding provision, no deduction shall be made from any member's salary on account of which the state's contributions on his account are in default.
- (e) In addition to the contributions deducted from compensation as hereinbefore provided, subject to the approval of the retirement board, any member may redeposit in the annuity savings fund by a single payment or by an increased rate of contribution an amount equal to the total amount which he previously withdrew therefrom as provided in this act, or any part thereof; or any member may deposit therein by a single payment or by an increased rate of contribution amounts for the purchase of an additional annuity, but such additional payments shall not exceed the amounts computed to provide with his prospective retirement allowance a total retirement allowance of one-half of his average final compensation at the minimum age at which the member will become eligible for superannuation retirement. Such additional amounts so deposited shall become a part of his accumulated contributions, except in the case of disability retirement, when they shall be treated as excess contributions returnable to the member in cash or as an annuity of equivalent actuarial value and shall not be considered in computing his pension. The accumulated contributions of a member withdrawn by him, or paid to his estate or to his designated beneficiary in event of his death as provided in this act, shall be paid from the annuity savings fund, and an amount equiva-

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lent to the difference between the accumulated contributions calculated at regular interest and the amount paid shall be transferred to the expense fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

- (2) Annuity reserve fund. The annuity reserve fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this act. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.
- (3) Pension accumulation fund. The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and from which pensions and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:
- (a) Each and every employer shall pay into the pension accumulation fund an amount equal to three and seventy-five one hundredths per centum (3.75%) of the earnable compensation of each member employed during the whole or such part of the preceding payroll period as such member was so employed by such employer; provided, however, that no payments shall be made into said pension accumulation fund until after July 1, 1945. Provided, further, until such time as the legislative assembly shall provide adequate funds for the establishment of such reserves as are set up in this act, such parts of such act as deal with reserves to be built up by contributions from the state shall be inoperative. Provided further, that for each payroll period after July 1, 1965, the employers' contribution shall be three and fifty, one hundredths per centum (3.50%).
- (b) The board of trustees of every school district maintaining an elementary school, or schools, the board of trustees of every school district maintaining a high school, and the board of trustees of every county high school shall, in the respective budgets for such schools, make and provide an appropriation for such payments to the pension accumulation fund.
- (c) When the total amount required for the elementary school budget of any district, including the amount to be paid into the pension accumulation fund will not require a levy against the property in the district in excess of ten (10) mills, no special or additional levy shall be made but the whole amount shall be paid out of the receipts from the levy authorized by section 75-3706.
- (d) When the total amount required for the elementary school budget for any district, including the amount to be paid into the pension accumulation fund, will require a levy more than ten (10) mills, a special levy against the taxable property in the district must be made in such number of mills as will raise the total amount for the payment to the pension accumulation fund, without being authorized at any election.

- (e) The total amount to be paid by each high school within each county to the pension accumulation fund shall be raised by a county-wide tax levy, and the county commissioners, except as hereinafter provided, shall make a county-wide levy of such number of mills as will raise such total amount; provided that the amount budgeted for payment to the pension accumulation fund in any high school budget shall not be deemed or considered as a part of or as included within the maximums for high school budgets as fixed and determined by section 75-4505, and the county-wide high school levy herein provided for shall not be deemed or construed as a part of the county-wide high school levy authorized by section 75-1723, unless the trustees making such budget so desire and the board of county commissioners find that such levy is not required to raise the amount necessary for such budget for all purposes including the payment to the pension accumulation fund.
- (f) The legislative assembly shall, in its appropriation for the maintenance and operation of the office of the state superintendent of public instruction, the state orphans home, the Montana state training school, the Montana state deaf and blind school, the state vocational school for girls, and the Montana state industrial school, include and provide appropriations in such an amount as will be sufficient to make such payments into such pension accumulation fund as may be required by reason and on account of such state superintendent of public instruction and such employees of such office and institutions as may be members.
- (g) The legislative assembly shall, in its appropriations for the maintenance and operation of the university of Montana, and its several departments and schools, include and provide appropriations in such an amount as will be sufficient to make such payments into the pension accumulation fund as may be required by reason or on account of such teachers of such university, and its several schools and departments, as may be members; provided that all such appropriations shall be made from the university millage fund or appropriations made by the legislature.
- (h) The board of county commissioners of each county shall, in the budget covering appropriations for the maintenance and operation of the office of county superintendent of schools, include and provide such an amount as will be sufficient to make such payments into such pension accumulation fund as may be required by reason and on account of such county superintendent and such other employees of such office as may be members.
- (i) On the basis of regular interest and of such mortality and other tables as shall be adopted by the retirement board, the actuary engaged by the retirement board to make each valuation required by this act during the period over which the deficiency contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the earnable compensation of the average new entrant, which if contributed on the basis of the compensation of such member throughout his entire period of active service, would be sufficient to provide for the payment of any pension payable by the state on his account. The rate per centum so determined shall be known as the "normal contribution" rate.

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After the deficiency contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum (1%) of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the retirement board and on the basis of regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.

- (j) Immediately succeeding the first valuation the actuary engaged by the retirement board shall compute the rate per centum of the total annual compensation of all members which is equivalent to four per centum (4%) of the amount of the total pension liability on account of all members and beneficiaries not dischargeable by the present assets of the pension accumulation fund and the aforesaid normal contribution if made on account of such members during the remainder of their active service. The rate per centum, originally so determined, shall be known as the "deficiency contribution." Provided such rates shall not go into effect until the year 1939-40.
- (k) The total amount payable annually by the state of Montana into the pension accumulation fund shall be not less than the sum of the rates per centum known as the normal contribution rate and the deficiency contribution rate of the total compensation earnable by all members during the preceding school year, provided, however, that the amount of each annual deficiency contribution shall be at least three per centum (3%) greater than the preceding annual deficiency payment, and that the aggregate payment into the pension accumulation fund shall be sufficient, when combined with the amount in the pension accumulation fund, to provide the pensions payable out of the fund during the current year.
- (1) The deficiency contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value, as actuarily computed and approved by the retirement board, of the total liability of such fund less the present value, computed on the basis of the normal contributions to be received on account of teachers who are at that time members.
- (m) All interest and dividends earned on the funds of the retirement system shall be credited to the pension accumulation fund and the amounts required to allow regular interest on the annuity savings fund, the annuity reserve fund and the pension reserve fund shall be transferred to the respective funds from the pension accumulation fund.
- (n) All pensions and benefits in lieu thereof, including pensions payable under section 75-2712, with the exception of those payable to members not entitled to prior service credit shall be paid from the pension accumulation fund.
- (o) All moneys and securities to the credit of the public school teachers' retirement salary fund and the public school teachers' permanent fund on the first day of September, nineteen hundred and thirty-seven, shall be paid by the state treasurer into the pension accumulation fund.

- (p) The retirement board may in its discretion transfer to and from the pension accumulation fund the amount of any surplus or deficit which may develop in the reserve creditable to the annuity reserve fund or the pension reserve fund, as shown by actuarial valuation, and also such expenses as hereinafter provided.
- (q) Upon the retirement of a new entrant, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.
- (4) Pension reserve fund. The pension reserve fund shall be the fund in which shall be held the reserves on all pensions granted to members not entitled to prior service credit and from which shall be paid such pensions and benefits in lieu thereof. Should a member not entitled to prior service credit who has been retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement, the pension reserve held on account of his pension shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of such a disability beneficiary be reduced as a result of an increase in his earning capacity the amount of annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.
- (5) Expense fund. The expense fund shall be the fund to which shall be credited all moneys contributed for the administrative expenses of the retirement system and from which the expenses of administration of the retirement system shall be paid exclusive of amounts payable as retirement allowance and as other benefits provided herein. Contributions shall be made to the expense fund as follows:
- (a) The retirement board shall determine annually the amount required to defray such expense in the ensuing fiscal year. There shall be deducted from the compensation of each member by the several employers the sum of one dollar for each year, in addition to all other deductions herein provided, which sum shall be transmitted to the retirement board in the same manner as herein provided for the transmission of other member contributions, and such sums so deducted shall become a part of and be charged to, said expense fund, and shall not become a part of the members' accumulated contributions.
- (b) The amount equivalent to the difference between the accumulated contributions calculated at regular interest and the amount paid at withdrawal or death shall be transferred to the expense fund.
- (c) The expense not payable by contributions of members and amounts transferred from the annuity savings fund as provided under paragraph (b) of this subsection shall be paid by the employers at a rate fixed by the retirement board not in excess of one per centum (1%) of the earnable compensation of the members for whom the employers make contributions as herein provided.

History: En. Sec. 8, Ch. 87, L. 1937; Sec. 3, Ch. 137, L. 1945; amd. Sec. 5, Ch. amd. Secs. 2 and 3, Ch. 202, L. 1939; amd. 28, L. 1949; amd. Sec. 1, Ch. 239, L. 1959.

75-2710. Duties of employer. (1) Each employer shall keep such records and from time to time shall furnish such information as the retirement board in the discharge of its duties may require.

- (2) Upon the employment of any teacher to whom this act may apply, he shall be informed by his employer of his duties and obligations in connection with the retirement system as a condition of his employment. Every teacher accepting employment shall be deemed to consent and agree to any deductions from his compensation required herein and to all other provisions of this act.
- (3) During September of each year, or at such time as the retirement board shall approve, each employer shall certify to the retirement board the names of all teachers to whom this act applies.
- (4) Each employer shall on the first day of each calendar month or at such less frequent intervals as the retirement board may approve, notify the retirement board of the employment of new teachers, removals, withdrawals and changes in salary of members that shall have occurred during the month preceding or the period covered since the last notification.

History: En. Sec. 9, Ch. 87, L. 1937.

- 75-2711. Collection of contributions by members. The collection of members' contributions shall be as follows:
- (a) Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll period subsequent to the first day of September, nineteen hundred and thirty-seven, the contribution payable by such member as provided in this act.
- (b) Each employer shall transmit monthly a warrant for the total amount of such deduction to the secretary of the retirement board. The secretary of the retirement board after making records of all such warrants shall transmit them to the state treasurer who shall collect the same; any employer who fails to transmit such warrants shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than ten dollars (\$10.00), nor more than one hundred dollars (\$100.00) for each violation.
- (c) Notwithstanding the foregoing, nothing in this section shall prevent the retirement board from modifying the method of collecting the contributions of members so that employers may retain the amount so deducted and have a corresponding amount deducted from state funds otherwise payable to them.

History: En. Subd. (b), Sec. 10, Ch. 87, L. 1937; amd. Sec. 4, Ch. 202, L. 1939.

- 75-2712. Provision for discontinuing former retirement system. (1) On and after the first day of September, 1937, no further retirements shall be made under the provisions of the law governing the former retirement system and no benefits shall be paid either from the public school teachers' retirement salary fund, or from the public school teachers' permanent fund as established under such law, except as hereinafter described.
- (2) All assets in the funds maintained under said law on the first day of September, 1937, shall be transferred to the pension accumulation fund of the retirement system to be held in trust and invested as a trust fund and disbursed only in payment of benefits to those teachers on whose account they were contributed.

- (3) Upon the transfer of such trust funds, the retirement salaries of all persons entitled to retirement salaries from the former retirement system on September first, (1st), 1937, shall be paid beginning as of September first, (1st), 1937, from such trust fund.
- Any such person who having retired upon a retirement allowance under said former retirement system, shall have retired after having served as a teacher for at least twenty-five school years, fifteen of which, including the last ten years, shall have been in the schools of this state, and who shall elect under the next preceding subdivision of this section to receive his interest in said public school teachers' retirement salary fund and said public school teachers' permanent fund in the form of an annuity, shall be entitled, while he shall remain retired, to receive and be paid from the said pension accumulation fund an annual allowance which, together with his said annuity, shall equal the sum of nine hundred dollars (\$900.00). Any other person retired upon such allowance who shall elect to receive his interest in said funds in the form of an annuity shall, upon reaching the age of sixty years, be entitled, while he shall remain retired, to receive and be paid from the said pension accumulation fund an annual allowance, which together with his said annuity, shall equal a sum which shall be that proportion of nine hundred dollars (\$900.00) which the number of school years which he shall have served as a teacher, and credited under the former retirement system bears to twenty-five.
- The retirement board of the teachers' retirement system of the state of Montana shall employ an actuary to value the liabilities to be assumed by the pension accumulation fund of the retirement system as of the first day of September, 1937, on account of the payment of the retirement salaries of all persons entitled thereto under the former retirement system as provided under subsection (2) of this section. The actuary so employed shall be an actuary also approved by the retirement salary fund board of the former retirement system. If such valuation shows that the amount held in trust in the pension accumulation fund for the payment of these retirement salaries is less than the amount required to continue such payments to the persons so retired the deficiency contribution rate payable by the state as provided under subsection (3) of section 75-2709 shall be increased in order to provide future contributions which shall be sufficient with the funds held in trust to provide such payments. If the valuation shows that the amount held in trust is in excess of the amount required to continue such payments to the persons so retired, then the amount of the excess shall be paid pro rata to the active teachers who were contributors under the provisions of the former retirement act in ratio to the amounts contributed under the provisions of the former retirement act.

History: En. Sec. 12, Ch. 87, L. 1937; amd. Sec. 6, Ch. 28, L. 1949; amd. Sec. 2, Ch. 270, L. 1959.

75-2713. Exemption from taxation, execution and assignment. The pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this act and the accumulated contributions and cash and securities in the various funds created under this act are hereby ex-

empted from any state, county or municipal tax of the state of Montana, and shall not be subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process whatsoever and shall be unassignable except as in this act specifically provided.

History: En. Sec. 13, Ch. 87, L. 1937.

Collateral References
Attorney General 6.
C.J.S. Attorney General §§ 5, 6.

75-2714. Protection against fraud. Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of this retirement system in any attempt to defraud such system as a result of such act, shall be guilty of a misdemeanor and shall be punishable therefor under the laws of the state of Montana. Should any change or error in records result in any member or beneficiary receiving from the retirement more or less than he would have been entitled to receive had the records been correct, then on discovery of any such error, the retirement board shall correct such error, and as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.

History: En. Sec. 14, Ch. 87, L. 1937.

75-2715. Limitation on membership of other systems. No other provision of law in any other statute which provides wholly or partly at the expense of the state of Montana or of any employer for retirement benefits for teachers of the said state, their widows, or other dependents, shall apply to members or beneficiaries of the retirement system established by this act, their widows or other dependents.

History: En. Sec. 15, Ch. 87, L. 1937.

### Cross-Reference

Supplemental social security coverage for teachers, secs. 59-1109 to 59-1113.

75-2716. Guarantee by state. Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation fund and the maintenance of annuity reserves in the annuity reserve fund and of pension reserves in the pension reserves fund as provided for in this act and the payment of all annuities, pensions, refunds, and other benefits granted under this act are hereby made obligations of the state of Montana, provided, however, that this section shall not be so construed as to make it mandatory upon the state to contribute a larger sum of money than specifically provided in section 75-2709, especially subdivision (3).

History: En. Sec. 16, Ch. 87, L. 1937.

# CHAPTER 28

# PUPILS—DISCIPLINE—SECRET FRATERNITIES PROHIBITED

Section 75-2801. Discipline.

75-2802. Secret fraternities prohibited—powers of trustees concerning—soliciting—penalty.

75-2801. (1133) Discipline. All pupils who may be attending public schools shall comply with the regulations established in pursuance of law

for the government of such schools, shall pursue the required course of study, and shall submit to the authority of the teachers of such schools. Continued and willful disobedience and open defiance of the authority of the teacher shall constitute good cause for expulsion from school. Any pupil who shall, in any way, cut, deface, or otherwise injure any schoolhouse, furniture, fences, or outbuildings thereof, or any book belonging to other pupils, or any books belonging to the district library, shall be liable to suspension and punishment, and the parent or guardian of such pupil shall be liable for damages, on complaint of the teacher or any trustee and upon proof of the same.

History: En. Sec. 37, p. 628, Cod. Stat. 1871; re-en. Sec. 36, p. 130, L. 1874; re-en. Sec. 1123, 5th Div. Rev. Stat. 1879; re-en. Sec. 1895, 5th Div. Comp. Stat. 1887; re-en. Sec. 1870, Pol. C. 1895; re-en. Sec. 917, Rev. C. 1907; re-en. Sec. 700, Ch. 76, L. 1913; re-en. Sec. 1133, R. C. M. 1921. Cal. Pol. C. Secs. 1684-1686.

# Collateral References

Schools and School Districts = 169. 79 C.J.S. Schools and School Districts § 493.

47 Am. Jur. 422, Schools, §§ 167 et seq.

Validity of regulation by school authorities as to clothes of pupils. 18 ALR 649 and 30 ALR 1216.

Regulations forbidding pupils to leave school grounds during school hours. 32 ALR 1342 and 48 ALR 659.

Right to discipline pupil for conduct away from school grounds. 41 ALR 1312.

Personal liability of school authorities for dismissal or suspension of pupil, 42 ALR 763.

Marriage or other domestic relations as ground for exclusion of pupil from public school. 63 ALR 1164.

Teacher's civil liability for administering corporal punishment to pupil, 43 ALR 2d 469.

75-2802. (1134) Secret fraternities prohibited—powers of trustees concerning—soliciting—penalty. It shall be unlawful for any pupil, registered as such, and attending any public high school, district, primary, or graded school, which is partially or wholly maintained by public funds, to join, become a member of, or to solicit any other pupil of any such school to join or become a member of any secret fraternity or society, wholly or partially formed from the membership of pupils attending any such schools, or to take part in the organization or formation of any such fraternity or society, except such societies or associations as are sanctioned by the trustees of such schools.

The trustees of all such schools shall enforce the provisions of this section, and shall have full power and authority to make, adopt, and modify all rules and regulations which, in their judgment and discretion, may be necessary for the proper governing of such schools and enforcing all the provisions of this section.

The trustees of such schools shall have full power and authority, pursuant to such rules and regulations made and adopted by them, to suspend or dismiss any pupil or pupils of such school therefrom, or to prevent them, or any of them, from graduating or participating in school honors when, after investigation, in the judgment of such trustees, or a majority of them, such pupil or pupils are guilty of violating any of the provisions of this section, or who are guilty of violating any rule, rules, or regulations adopted by such trustees for the purpose of governing such schools or enforcing this section.

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It is hereby made a misdemeanor for any person not a pupil of such schools to be upon the school grounds, or to enter any school building for the purpose of "rushing" or soliciting while there any pupil or pupils of such schools to join any fraternity, society, or association organized outside of said schools.

All persons convicted of violating the provisions of this section shall be punished by a fine of not less than five dollars nor more than twenty-five dollars.

History: En. Sec. 701, Ch. 76, L. 1913; re-en. Sec. 1134, R. C. M. 1921.

79 C.J.S. Schools and School Districts §§ 493, 499, 503.
47 Am. Jur. 423, Schools, § 169.

-en. sec. 1134, R. C. M. 1921.

Regulations as to school or college fraternities. 27 ALR 1074 and 134 ALR 1274.

# Cross-Reference

Secret societies prohibited in public high schools or other elementary schools, sec. 75-4223.

# Collateral References

Schools and School Districts 169, 171, 173.

# CHAPTER 29

# COMPULSORY SCHOOL ATTENDANCE—TRUANT OFFICERS

Section 75-2901. Compulsory attendance—excuses.

75-2902. Employment of children under sixteen.

75-2903. Truant officers, powers and duties.

75-2904. Duties of principals, teachers and clerks.

75-2905. Prosecution of truants.

75-2906. Pauper children.

75-2907. Indian children—intent of act.

75-2908. Acceptance of tribal authority by school boards.

75-2909. Enforcement of attendance laws on Indian reservations.

75-2910. Boards to require attendance by Indian children.

75-2901. (1135) Compulsory attendance—excuses. All parents, guardians, and other persons who have care of children, shall instruct them, or cause them to be instructed in reading, spelling, writing, language, English grammar, geography, history and civics, physiology and hygiene, and arithmetic. Every parent, guardian, or other person, having charge of any child who is seven (7) years of age prior to the beginning of the fall school term and not over sixteen (16) years of age, shall send such child to a public, private, or parochial school, in which the basic language taught is English, for the time that the school attended is in session, provided, however, that children sixteen (16) years of age or over who have successfully completed the school work of the eighth grade, or whose wages are necessary to the support of the family of such child, may be employed during the time that the public schools are in session upon making the proof and securing the age and schooling certificate provided for in the following section. School attendance shall begin within the first week of the school term, unless the child is excused from such attendance by the superintendent of the public schools, in city and other districts having such superintendent, or by the clerk of the board of trustees in districts not having such superintendent, or by the principal of the private or parochial school, upon satisfactory showing either that the bodily or mental condition of the child does not permit of its attendance at school, or that the child is being instructed at home by a person qualified, in the opinion of the superintendent of schools in city or other districts having such superintendent, to teach the branches named in this section; provided, that the county superintendent may excuse children from attendance upon such schools where, in his judgment the distance makes such attendance an undue hardship. In case the county superintendent, city superintendent, principal, or clerk refuses to excuse a child from attendance at school, an appeal may be taken from such decision to the district court of the county, upon giving a bond, within ten (10) days after such refusal, to the approval of said court, to pay all costs of the appeal: and the decision of the district court in the matter shall be final. Any parent, guardian or other person having the care or custody of a child between the ages of seven (7) and sixteen (16) years, who shall fail to comply with the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars (\$5.00) nor more than twenty dollars (\$20.00).

History: Ap. p. Sec. 1921, 5th Div. Comp. Stat. 1887; amd. Sec. 1920, Pol. C. 1895; amd. Sec. 1, Ch. 45, L. 1903; re-en. Sec. 965, Rev. C. 1907; amd. Sec. 1100, Ch. 76, L. 1913; amd. Sec. 1, Ch. 75, L. 1921; re-en. Sec. 1135, R. C. M. 1921; amd. Sec. 1, Ch. 61, L. 1949; amd. Sec. 1, Ch. 53, L. 1955; amd. Sec. 1, Ch. 39, L. 1959.

#### Cross-References

Application of Montana Rules of Civil Procedure to this section, sec. 93-2711-7. Compulsory vaccination of children for smallpox, sec. 69-709.

Flaherty v. Butte Electric R. Co., 42 M 89, 95, 111 P 348; Thien v. Wiltse, 49 M 189, 194, 141 P 146; Grant v. Michaels, 94 M 452, 465, 23 P 2d 266.

#### Collateral References

Schools and School Districts 160, 173.

79 C.J.S. Schools and School Districts §§ 463 et seq., 501 et seq. 47 Am. Jur. 412, Schools, §§ 156 et seq.

Extent of legislative power with respect to attendance and curriculum in schools. 39 ALR 477 and 53 ALR 832.

Releasing public school pupils from attendance for purposes of attending religious education classes. 2 ALR 2d 1371.

Religious beliefs of parents as defense to prosecution for failure to comply with compulsory education law. 3 ALR 2d 1401.

What constitutes "private school" within statute making aftendance at such a school compliance with compulsory school attendance law. 14 ALR 2d 1369.

Applicability of compulsory attendance law covering children of a specified age, with respect to a child who has passed the anniversary date of such age. 73 ALR 2d 874.

(1136) Employment of children under sixteen. No child under sixteen (16) years of age shall be employed or be in the employment of any person, firm, company or corporation during the school term, and while the public schools are in session in the district in which such child lives, unless such child shall present to such persons, firm, company, or corporation an age and schooling certificate. Such certificate shall be issued by the city superintendent of schools or principal of schools, or by some person duly authorized by him, and in districts not having a city superintendent or principal, by the county superintendent of schools upon satisfactory proof that such child is of the age of sixteen (16) years or over, and has successfully completed the eighth grade as the same is designated and determined by the state board of education; provided, also, that in case the wages of any child over sixteen (16) years of age are necessary to the support of the family of such child, the city superintendent of schools, or principal of schools, or county superintendent, as the case may be, may, upon production of satisfactory evidence that the wages

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of such child are necessary to the support of the family, issue a certificate permitting the employment of such child, even though the said child may not have completed said eighth grade work. The age and schooling certificate shall be formulated by the superintendent of public instruction, and blank certificates shall be furnished by the clerk of the board of trustees.

Every person, firm, company, or corporation employing any child under sixteen (16) years of age shall exact the age and schooling certificate, or the certificate permitting the employment of such child, prescribed in this section, and shall, upon the request of the truant officer or other authorized person by school trustees, permit him to examine such certificates. When, however, employment of such child ceases, the employer shall promptly return to the city superintendent of schools, or principal of schools, or county superintendent of schools of such district where said child resides, the age and schooling certificate or certificate permitting the employment of such child. Any person, firm, company, or corporation employing any child contrary to the provisions of this chapter shall be fined not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) for each and every offense; provided, however, that nothing in this act shall be construed to interfere with the employment of a child during the time school is not actually in session.

History: En. Sec. 2, Ch. 45, L. 1903; re-en. Sec. 966, Rev. C. 1907; amd. Sec. 1101, Ch. 76, L. 1913; amd. Sec. 1, Ch. 43, L. 1919; amd. Sec. 2, Ch. 75, L. 1921; re-en. Sec. 1136, R. C. M. 1921; amd. Sec. 1, Ch. 53, L. 1955.

# References

Grant v. Michaels, 94 M 452, 465, 23 P 2d 266.

Collateral References

Infants € 14. 43 C.J.S. Infants § 12. Inclusion or exclusion of day of birth in computing age under statute as to hours of work. 5 ALR 2d 1154.

Collective bargaining, child labor as subject to. 12 ALR 2d 280.

Charities as within child labor laws. 26 ALR 2d 1028.

Child labor laws as affecting liability for injury by farm machinery. 67 ALR 2d 1135, 1147, 1185.

75-2903. (1137) Truant officers, powers and duties. To aid in the enforcement of this act, truant officers shall be appointed and employed as follows: In districts of the first and second classes, the board of trustees shall appoint and employ one or more truant officers; in districts of the third class, the trustees shall appoint, if they deem it advisable, a constable or other person as truant officer; in districts not appointing a truant officer, it shall be the duty of the county superintendent to act as truant officer. The compensation of the truant officer shall be fixed and paid by the board appointing him. The truant officer shall be vested with police powers, the authority to serve warrants, and have authority to enter workshops, factories, stores, and all other places where children may be employed, and do whatever may be necessary, in the way of investigation or otherwise, to enforce the provisions of this chapter. He is also authorized and it shall be his duty to take into custody the person of any youth between eight and sixteen years of age who is not attending school or who is not regularly employed and the holder of an age and schooling, or other lawful certificate permitting such employment or who has not a proper certificate excusing such attendance. The truant officer shall conduct said youth to the school he has been attending, or which he should rightfully attend.

The truant officer shall institute proceedings against any officer, parent, guardian, person or corporation violating any provisions of this chapter, and perform such other services as the superintendent of schools, or the board of trustees may deem necessary to preserve the morals and secure the good conduct of school children, and to enforce the provisions of this chapter. The truant officer shall keep a record of his transactions for the inspection and information of the superintendent of the schools and the board of trustees; and he shall make daily reports to the superintendent of schools during the school term in districts having superintendents, and to the clerk of the board of trustees in districts not having superintendents, as often as required by him. Suitable blanks for the use of the truant officer shall be provided by the clerk of the board of trustees.

History: Ap. p. Sec. 1924, Pol. C. 1895; amd. Sec. 5, Ch. 45, L. 1903; re-en. Sec. 969, Rev. C. 1907; amd. Sec. 1103, Ch. 76, L. 1913; amd. Sec. 3, Ch. 75, L. 1921; re-en. Sec. 1137, R. C. M. 1921.

#### References

Grant v. Michaels, 94 M 452, 465, 23 P 2d 266.

#### Collateral References

Schools and School Districts 161. 79 C.J.S. Schools and School Districts 473.

47 Am. Jur. 429, Schools, §§ 177 et seq.

Validity of regulation by school authorities as to clothes or personal appearance of pupils. 18 ALR 649 and 30 ALR 1216.

Regulations forbidding pupils to leave school grounds during school hours. 32 ALR 1342 and 48 ALR 659.

Right to discipline pupil for conduct away from school grounds. 41 ALR 1312.

Personal liability of school authorities for dismissal or suspension of pupil. 42 ALR 763.

What constitutes delinquency or incorrigibility, justifying commitment of infant. 45 ALR 1533 and 85 ALR 1099.

Marriage or other domestic relations as grounds for exclusion of pupil from public school. 63 ALR 1164.

Truant or attendance officer's liability for assault and battery or false imprisonment. 62 ALR 2d 1328.

75-2904. (1138) Duties of principals, teachers and clerks. It shall be the duty of all principals, and teachers of all schools, public, private, and parochial, to report to the clerk of the board of trustees of the district in which the schools are situated, the names, ages, and residence of all pupils in attendance at their schools, together with such other facts as said clerk may require, in order to facilitate the carrying out of the provisions of this chapter, and the clerk shall furnish blanks for such purpose, and such report shall be made during the last week of each month from September to June, inclusive, of each year. It shall be the further duty of such principals and teachers to report to the truant officer, the superintendent of public schools, or the clerk of the board of trustees, as the case may be, all cases of truancy or incorrigibility in their respective schools, as soon after these offenses have been committed as practicable.

History: En. Sec. 6, Ch. 45, L. 1903; re-en. Sec. 970, Rev. C. 1907; amd. Sec. 1104, Ch. 76, L. 1913; re-en. Sec. 1138, R. C. M. 1921.

#### References

Grant v. Michaels, 94 M 452, 465, 23 P 2d 266.

75-2905. (1139) Prosecution of truants. On request of the superintendent of schools or the board of trustees, or when it otherwise comes to his notice, the truant officer shall examine into any case of truancy or non-attendance within his district, and warn said truant or nonattendant and his parent, guardian, or other person in charge, in writing, of the final conse-

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quence of truancy or nonattendance if persisted in. When any child of an age at which attendance at the public schools is enjoined by the laws of this state is not attending school, or is not lawfully employed or lawfully excused from such attendance, the truant officer shall notify the parent, guardian, or other person in charge of such child, of the fact, and require such parent, guardian, or other person in charge to cause the child to attend some recognized school within two days from the date of the notice; and it shall be the duty of the parent, guardian, or other person in charge of the child so to cause its attendance at some recognized school.

Upon failure to do so, the truant officer shall make complaint against the parent, guardian, or other person in charge of the child, in any court of competent jurisdiction in the district in which the offense occurs for such failure, and upon such conviction, the parent, guardian, or other person in charge shall be fined not less than five dollars nor more than twenty dollars; or the court may, in its discretion, require the person so convicted to give bond in the penal sum of one hundred dollars, with sureties, to the approval of the court, conditioned that he or she will cause the child under his or her charge to attend some recognized school within two days thereafter, and to remain at such school during the term prescribed by law; and upon failure or refusal of any parent, guardian or other person to pay said fine and costs, or furnish said bond, according to the order of the court, then said parent, guardian, or other person shall be imprisoned in the county jail not less than ten days nor more than thirty days.

History: En. Sec. 6, Ch. 45, L. 1903; re-en. Sec. 971, Rev. C. 1907; amd. Sec. 1105, Ch. 76, L. 1913; amd. Sec. 4, Ch. 75, L. 1921; re-en. Sec. 1139, R. C. M. 1921.

# Collateral References

Schools and School Districts \$\infty\$ 161, 173. 79 C.J.S. Schools and School Districts \$\xi\$ 471, 501.

#### References

Grant v. Michaels, 94 M 452, 465, 23 P 2d 266.

75-2906. (1140) Pauper children. When any truant officer is satisfied that any child compelled to attend school by the provisions of this chapter is unable to attend school because absolutely required to work at home or elsewhere, in order to support itself, or help support or care for others legally entitled to its services, who are unable to support or care for themselves, or who are unable to attend school because of some physical ailment, the truant officer shall report the case to the authorities charged with the relief of the poor, and it shall be the duty of said officers to afford such relief as will enable the child to attend school the time each year required under the provisions of this chapter. Such child shall not be considered or declared a pauper by reason of the acceptance of the relief herein provided for. In case the child or its parents or guardians refuses or neglects to take advantage of the provisions thus made for its instruction, such child may be committed to a state institution at the discretion of the court.

History: Ap. p. Sec. 6, Ch. 45, L. 1903; re-en. Sec. 973, Rev. C. 1907; amd. Sec. 1108, Ch. 76, L. 1913; re-en. Sec. 1140, R. C. M. 1921; amd. Sec. 1, Ch. 58, L. 1961.

# References

Jones v. Cooney, 81 M 340, 349, 263 P 429; Grant v. Michaels, 94 M 452, 465, 23 P 2d 266.

Collateral References

Infants 16, Paupers 43(1); Schools and School Districts 161.

43 C.J.S. Infants §§ 8, 93, 98, 100; 70 C.J.S. Paupers § 72; 79 C.J.S. Schools and School Districts § 471.

75-2907. Indian children—intent of act. It is the intent of the provisions of this act to permit any school board or any other duly qualified officer in the state of Montana to accept any authority which may be granted by the tribal council of any Indian tribe to any such officer or school board relating to matters of compulsory education of children or any other matter which would be governed by the laws of the state of Montana relating generally to the education of children residing within a school district of the state of Montana were it not for the authority of such tribal council or Indian tribe, within the territorial limits of the state of Montana, as such authority may have been reserved to said Indian tribe or tribal council under the laws of the United States of America and its treaties with such Indian tribe.

History: En. Sec. 1, Ch. 35, L. 1961.

75-2908. Acceptance of tribal authority by school boards. Any school board of the state of Montana is hereby authorized to accept any authority granted to it by the tribal council or other governing body of any Indian reservation in the state of Montana and to enforce all laws of the state of Montana which would be applicable in connection with the education of any Indian child residing within the state of Montana were it not for the fact of the existence of said Indian reservation and the powers reserved to the tribal council or other governing body of said Indian tribe under the laws or treaties of the United States of America and said Indian tribe.

History: En. Sec. 2, Ch. 35, L. 1961.

75-2909. Enforcement of attendance laws on Indian reservations. It shall be and hereby is made the duty of any officer otherwise charged with the enforcement of laws pertaining to the compulsory education of children residing within the state of Montana to enforce such duties as may be given by the Indian tribe and accepted by the school board of any school district within the state of Montana pursuant to the provisions of this act.

History: En. Sec. 3, Ch. 35, L. 1961.

75-2910. Boards to require attendance by Indian children. Unless otherwise prohibited by the laws or treaties affecting any Indian tribe, children of whom reside within any school district of the state of Montana, it shall be the duty of the school board of any school district within the state of Montana where said child resides to require the same attendance at school of Indian children as is required of any other child or children residing within the territorial limits of said school district.

History: En. Sec. 4, Ch. 35, L. 1961.

# CHAPTER 30

JUVENILE DISORDERLY PERSONS—COMMITMENT TO INDUSTRIAL SCHOOL

Section 75-3001. Juvenile disorderly persons. 75-3002. Commitment to industrial school.

75-3001. (1171) Juvenile disorderly persons. Every child between the ages of eight and fourteen years, and every child between the ages of fourteen and sixteen years unable to read and write the English language, or not engaged in some regular employment and who is an habitual truant from school, or who absents itself from school, or who, while in attendance at any public, private or parochial school, is incorrigible, vicious, or immoral in conduct, or who habitually wanders about the streets and public places during school hours, having no business or lawful occupation, shall be deemed a juvenile disorderly person and be subject to the provisions of this chapter.

History: En. Sec. 4, Ch. 45, L. 1903; re-en. Sec. 968, Rev. C. 1907; re-en. Sec. 1106, Ch. 76, L. 1913; re-en. Sec. 1171, R. C. M. 1921.

#### Cross-Reference

Application of Montana Rules of Civil Procedure to commitment proceedings, sec. 93-2711-7.

# Collateral References

Infants 16.
43 C.J.S. Infants §§ 8, 93, 98, 100.
47 Am. Jur. 429, Schools, §§ 177 et seq.

Validity of regulation by school authorities as to clothes or personal appearance of pupils. 18 ALR 649 and 30 ALR 1216.

Regulations forbidding pupils to leave school grounds during school hours. 32 ALR 1342 and 48 ALR 659.

Right to discipline pupils for conduct away from school grounds. 41 ALR 1312. Personal liability of school authorities for dismissal or suspension of pupil. 42

ALR 763.

What constitutes delinquency or incorrigibility, justifying commitment of infant. 45 ALR 1533 and 85 ALR 1099.

Marriage or other domestic relations as grounds for exclusion of pupil from public school. 63 ALR 1164.

(1172) Commitment to industrial school. If the parent, guardian, or other person in charge of any child, shall, upon the complaint under the last section for a failure to cause the child to attend a recognized school, prove inability to do so, then he or she shall be discharged and thereupon the truant officer shall make complaint that the child is a juvenile disorderly person within the meaning of the preceding section. If such complaint is made before any mayor, justice of the peace or police judge, it shall be certified by such magistrate to the district court in and for the county in which the child resides or to a judge of said district court. The district court or the judge thereof to whom the same is certified shall hear such complaint, and if it be determined that the child is a juvenile disorderly person within the meaning of the preceding section the said child shall be committed by the said court, or the judge thereof to whom the complaint was certified, to the industrial school hereinafter provided for, where he shall be subject to all rules and regulations of said industrial school; provided, further, that if for any cause the parent, guardian, or other person in charge of any juvenile disorderly person as defined in the preceding section shall fail to cause such juvenile disorderly person to attend school, the complaint against such juvenile disorderly person shall be made, heard, and determined in like manner as provided in case the

parent proves inability to cause such juvenile disorderly person to attend school.

History: Ap. p. Sec. 6, Ch. 45, L. 1903; amd. Sec. 1, Ch. 80, L. 1905; re-en. Sec. 972, Rev. C. 1907; amd. Sec. 1107, Ch. 76, L. 1913; re-en. Sec. 1172, R. C. M. 1921.

# Collateral References

31 Am. Jur. 320, Juvenile Courts and Delinquent, Dependent, and Neglected Children, § 43.

# CHAPTER 31

#### SCHOOLHOUSE SITES AND CONSTRUCTION

Section 75-3101. Selection.

75-3102. Architecture—approval of state board of health required, 75-3103. Floor space—air—light—regulations by board of health.

75-3104. Penalties.

75-3105. Suggestive plans.

75-3106. Vestibules.

75-3107. Care of schoolhouses.

75-3108. Water supply and toilet accommodations.

75-3101. (1173) Selection. Whenever, in the judgment of the board of trustees of any school district of the third class, it is desirable to select, purchase, exchange, or sell a schoolhouse site, or whenever petitioned so to do by one-third of the voters of such district, the district board shall without delay call a meeting at some convenient time and place fixed by the board to vote upon such question of selection, purchase, exchange, or sale of schoolhouse site. Such selection shall be conducted and votes canvassed in the same manner as at the annual election of school officers. Three notices giving the time, place, and purpose of such meeting shall be posted in three public places in the district by the clerk at least ten days prior to such meeting. If a majority of the electors of the district voting at such meeting or election shall be in favor of selecting, purchasing, exchanging, or selling the schoolhouse site, the board shall carry out the will of the voters thus expressed; provided, that all sites so chosen must be approved by the county superintendent of schools and the county health officer; and also provided that any sites so changed cannot again be changed within three years from the date of such action, except upon the advice of the county superintendent of schools and county health officer.

The school site shall be selected in a place that is convenient, accessible, suitable, and well drained; provided, that in districts of the first and second class, the site shall be not less than one-half of an average city block, and in districts of the third class shall contain not less than one acre. The state board of land commissioners shall have authority to sell to any school district at the appraised value, or to lease for any period of time less than ninety-nine years, at a rental of one dollar per year, any tract of state land not exceeding ten acres, to be used for schoolhouse site.

History: En. Sec. 1600, Ch. 76, L. 1913; amd. Sec. 1, Ch. 42, L. 1917; amd. Sec. 30, Ch. 196, L. 1919; re-en. Sec. 1173, R. C. M. 1921.

# Cross-Reference

Sale of liquor near school, restrictions, sec. 4-415.

# Approval of Site before Election

While under this section a site for a schoolhouse must be approved by the county health officer, such approval is not required until after the site has been chosen by the electors of the district at an election called for that purpose (75-1632); hence, relator in a proceeding to

compel a board of trustees to call an election was not required to allege in the affidavit for the writ that the proposed site had been so approved; however, in the interest of economy it would seem advisable to obtain approval in advance of the election. State ex rel. Wildin v. Eickoff, 84 M 539, 543 et seq., 276 P 954.

# Class of Districts Affected

Since the number of trustees of the school board in a district of the third class is three, and this section relates exclusively to districts of that class, an affidavit for a writ of mandate to compel a board of such a district to call an election for choosing a school site, may not be held insufficient for failure to allege affirmatively that the district was of the third class, where but three persons were named as the defendant trustees and they were charged with having failed to obey the mandate of this section. State ex rel. Wildin v. Eickoff, 84 M 539, 543 et seq., 276 P 954.

Provisions of this section have no application to first and second class districts. Nichols v. School District No. 3, 87 M 181, 187, 287 P 624.

#### Designation of Site

Under this section, an election for the purpose of choosing a school site in a district of the third class must be conducted as an election of school officers; it is not provided that the petition for such an election shall designate a definite site to be voted upon; therefore, the petition need not designate a site, but any five qualified electors may file with the clerk of the school board the nomination of a particular site, and others in like manner may nominate other sites, the election to proceed as provided in section 75 1604 et seq. State ex rel. Wildin v. Eickoff, 84 M 539, 543 et seq., 276 P 954.

## Signatures to Petition

A petition to the board of trustees of a school district of the third class that an election be called for the purpose of selecting a site for a schoolhouse must, under this section, be signed by one-third of the voters of the district, but the petition itself need not set forth that it is so signed, the question of its sufficiency in that regard being determinable upon presentation. State ex rel. Wildin v. Eickoff, 84 M 539, 543 et seq., 276 P 954.

# References

State ex rel. Hessler v. District Court, 64 M 296, 300, 209 P 1052.

#### Collateral References

Schools and School Districts 68.
78 C.J.S. Schools and School Districts 247.

47 Am. Jur. 309, Schools, §§ 17 et seq.

75-3102. (1174) Architecture—approval of state board of health required. No school building in the state, either publicly or privately owned or operated, shall hereafter be erected, repaired, or enlarged until the plans and specifications thereof shall have been submitted to the state board of health, and its approval endorsed thereon. Such plans and specifications shall show in detail the ventilation, the heating, and lighting of such building.

History: En. Sec. 1601, Ch. 76, L. 1913; re-en. Sec. 1174, R. C. M. 1921; amd. Sec. 1, Ch. 257, L. 1947.

# Cross-References

Fire escapes, secs. 69-1801 to 69-1810.

Inspection of schools by state board of health, sec. 69-110.

# Collateral References

Schools and School Districts 71, 73. 78 C.J.S. Schools and School Districts \$\\$ 256 et seq., 262.

75-3103. (1175) Floor space — air — light — regulations by board of health. The state board of health shall not approve plans for the erection of any school building, or addition thereto or remodeling thereof unless the same shall provide (a) at least fifteen (15) square feet of floor space and two hundred (200) cubic feet of air space for each pupil to be accommodated in each study or recitation room therein; (b) a system of ventilation which shall in the judgment of said state board of health be adequate to produce satisfactory conditions of air in all schoolrooms at all times and under all conditions; (c) a ventilation system of fire resistant material and construction, and (d) a system of heating that shall be considered by the

state board of health as fully adequate, and (e) a system for lighting all parts of the building that shall produce at all times illumination of such quality and quantity as shall be satisfactory to the state board of health.

The state board of health shall, from time to time, as deemed necessary, adopt regulations in the manner provided by law, setting forth the requirements for school sites, school buildings, ventilation, heating, lighting, water supply, sewage and waste disposal, and such other matters as pertain to the health and physical well-being of the students, teachers and others who frequent schools.

Any contractor, architect, school board or any other person, firm or corporation who shall violate the provisions of this act, or of any regulation promulgated under this act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00).

History: En. Sec. 1602, Ch. 76, L. 1913; re-en. Sec. 1175, R. C. M. 1921; amd. Sec. 1, Ch. 173, L. 1933; amd. Sec. 2, Ch. 257, L. 1947.

Collateral References
Schools and School Districts ₹ 71.
78 C.J.S. Schools and School Districts ₹ 256 et seq.

75-3104. (1176) Penalties. The county treasurer shall not make any payments on any contract arising under the provisions of this chapter until the contractor furnishes a certified statement, signed by the state board of health, that the plans and specifications of the school building to be erected or remodeled have been fully approved by the state board of health.

History: En. Sec. 1603, Ch. 76, L. 1913; re-en. Sec. 1176, R. C. M. 1921.

75-3105. (1177) Suggestive plans. It shall be the duty of the state board of health to furnish to all districts of the third class suggestive plans for school buildings, to be erected in conformity with the above rules.

History: En. Sec. 1604, Ch. 76, L. 1913; re-en. Sec. 1177, R. C. M. 1921.

**75-3106.** (1178) **Vestibules.** No one and two-room schoolhouses shall be erected without a vestibule of reasonable size.

History: En. Sec. 1605, Ch. 76, L. 1913; re-en. Sec. 1178, R. C. M. 1921.

75-3107. (1179) Care of schoolhouses. It shall be the duty of boards of trustees in districts of the third class to require that the schoolroom or rooms shall be thoroughly scrubbed and cleaned, including the floors, interior woodwork and windows, at least once every three months.

History: En. Sec. 1606, Ch. 76, L. 1913; re-en. Sec. 1179, R. C. M. 1921.

78 C.J.S. School and School Districts \$ 262.

47 Am. Jur. 316, Schools, §§ 29 et seq.

Collateral References

Schools and School Districts 73.

75-3108. (1180) Water supply and toilet accommodations. The board of trustees shall furnish such water supply and toilet accommodations as shall be approved by the state board of health.

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History: En. Sec. 1607, Ch. 76, L. 1913; re-en. Sec. 1180, R. C. M. 1921.

# CHAPTER 32

#### SCHOOL LIBRARIES

Section 75-3201. Location and control of libraries.

75-3202. Rules-reports. 75-3203. Selection of books.

75-3201. (1184) Location and control of libraries. The library shall be under the control of the board of trustees, and must be kept, when practicable, in the schoolhouse, and shall be for the use of the pupils and all residents of the district.

1203, Ch. 76, L. 1913; re-en. Sec. 1184, History: En. Sec. 2003, Pol. C. 1895; re-en. Sec. 1033, Rev. C. 1907; amd. Sec. R. C. M. 1921.

75-3202. (1185) Rules—reports. The trustees shall be held accountable for the proper care and preservation of the library, and shall make all needful rules and regulations not provided for by the superintendent of public instruction, and not inconsistent therewith; and they shall report annually to the county superintendent all library statistics which may be required by the blanks furnished for the purpose by the superintendent of public instruction.

1204, Ch. 76, L. 1913; re-en. Sec. 1185, R. C. M. 1921. History: En. Sec. 2004, Pol. C. 1895; re-en. Sec. 1034, Rev. C. 1907; re-en. Sec.

(1186) Selection of books. All books shall be selected by the county superintendent and school trustees, acting together, from lists approved by the superintendent of public instruction. It shall be the duty of the county superintendent in his visits to inspect the library, and to make such suggestions regarding its use and care as he may deem advisable. It shall be the duty of the superintendent of public instruction to formulate rules and regulations for the school libraries, and furnish to the county superintendent, from time to time, such instruction and information as will make the use of the library most effective.

History: En. Sec. 2005, Pol. C. 1895; 1205, Ch. 76, L. 1913; re-en. Sec. 1186, re-en. Sec. 1035, Rev. C. 1907; amd. Sec. R. C. M. 1921.

# CHAPTER 33

# SCHOOL BUSES-REQUIREMENTS-DRIVERS' QUALIFICATIONS -CONSTRUCTION AND OPERATION

Section 75-3301 to 75-3307. Repealed.

75-3308. Authority for regulating design, construction and operation of school buses.

Penalty for violating regulations.

Meeting school bus receiving or discharging children-duty to stopmeeting on highways with separate roadways-duty of school bus driver to stop at railroad crossings.

75-3311. Penalty.

75-3301 to 75-3307. (1186.1 to 1186.7) Repealed—Chapter 189, Laws of 1951.

Repeal

ing to the requirements of school buses These sections (Secs. 1 to 7, Ch. 18, L. and the operation thereof, were repealed by Sec. 9, Ch. 189, Laws 1951. 1933; Sec. 1, Ch. 16, L. 1939), relatNOTE.—Sections identical with sections 75-3306 and 75-3307, R. C. M. 1947, repealed by Sec. 9, Ch. 189, Laws 1951, were enacted as Secs. 1, 2, Ch. 61, Laws 1953 and appear as sections 75-3310 and 75-3311.

- 75-3308. Authority for regulating design, construction and operation of school buses. (1) That the state board of education, by and with the advice of the supervisor of the Montana highway patrol and the superintendent of public instruction, shall adopt and enforce regulations not inconsistent with the motor vehicle code and the minimum standards for school buses, adopted by the national commission on safety education to govern the design, construction and operation of all school buses used for the transportation of school children when owned and operated by any school district or privately owned and operated under contract with any school district in this state and such regulations shall by reference be made a part of any such contract with a school district.
- (2) Every school district, its officers and employees, and every person employed under contract by a school district shall be subject to such regulations.
- (3) These regulations shall include provisions that no person shall drive or operate, or be employed or permitted to drive or operate, any school bus who has not received and filed with the county superintendent of schools a certificate from the board of trustees of the school district for which the school bus is to be driven or operated, certifying the following:
  - a. That he is at least twenty-one (21) years of age.
  - b. That he is of good moral character.
  - c. That he is the holder of a chauffeur's license.
- d. That he has filed with the board of trustees a satisfactory physical examination signed by a licensed physician in the state of Montana on a blank provided by the state board of education.
- (4) The term "approved school bus" shall mean every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated and under contract for transportation of children to or from school.
- (5) Every approved school bus used for the transportation of school children shall bear upon the front and rear thereon a plainly visible sign containing the words "school bus" in letters not less than eight (8) inches in height. When a school bus is being operated upon a highway for purposes other than actual transportation of children either to or from school or for school functions, all markings thereon indicating "school bus" shall be covered or concealed.
- (6) The Montana state board of education is authorized to adopt standards and specifications applicable to lighting equipment on and special warning devices to be carried by school buses, consistent with the provisions of this act, but supplemental thereto; except that such standards and specifications may designate and permit the use of flashing warning lights on school buses for the purpose of indicating when children are boarding or alighting from any said bus. Such standards and specifications shall correlate with and, so far as possible, conform to the specifications then current as approved by the society of automotive engineers.

75-3309 SCHOOLS

It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

History: En. Sec. 1, Ch. 183, L. 1947; amd. Sec. 1, Ch. 172, L. 1955; amd. Sec. 1, Ch. 68, L. 1961.

75-3309. Penalty for violating regulations. That any officer or employee of any school district who violates any of said regulations or fails to include obligation to comply with said regulations in any contract executed by them on behalf of a school district shall be guilty of misconduct and subject to removal from office or employment by proceedings instituted in any court of competent jurisdiction by the county attorney of the county in which the school district is situated. Any person operating a school bus under contract with a school district who fails to comply with any said regulations shall be guilty of breach of contract and such contract shall be canceled after notice and hearing by the responsible officers of such school district.

History: En. Sec. 2, Ch. 183, L. 1947.

75-3310. Meeting school bus receiving or discharging children—duty to stop—meeting on highways with separate roadways—duty of school bus driver to stop at railroad crossings. The driver of a vehicle, when approaching the front or rear of a school bus that has come to a stop on a highway outside the limits of an incorporated city or town, and is receiving or discharging school children, shall stop such vehicle not less than ten (10) feet from such school bus and keep said vehicle stationary until such children have entered such school bus or have alighted and reached the side of the highway on which they live, and the school bus has resumed motion, or the driver has signaled traffic to proceed.

The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway, or when upon a controlled access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

The driver of any school bus carrying any school child, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty (50) feet, but not less than fifteen (15) feet, from the nearest rail of such railroad and while so stopped shall open door and shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so, the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossing, and the driver shall not shift gears while crossing the track or tracks.

No stop need be made at any such crossing where a police officer or a traffic-control signal directs traffic to proceed.

History: En. Sec. 1, Ch. 61, L. 1953; amd. Sec. 2, Ch. 172, L. 1955.

#### Cross-Reference

For other school bus regulations, secs. 32-2198, 32-2199.

#### Collateral References

Schools and School Districts \$\infty 159\frac{1}{2}\$. 79 C.J.S. Schools and School Districts \$ 475.

75-3311. Penalty. Every person who shall fail to comply with or who shall violate this act shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00), or by imprisonment in the county jail for not more than thirty days, or by both such fine or [and] imprisonment.

History: En. Sec. 2, Ch. 61, L. 1953.

## Compiler's Note

The bracketed word "and" was inserted by the compiler.

# CHAPTER 34

# TRANSPORTATION OF PUPILS

Section 75-3401. Boards of trustees to furnish transportation. Meaning of the term "transportation." 75-3402. 75-3403. School board may operate buses or contract for transportation of pupils—school board may set up depreciation reserve for purchase of replacement buses and two-way radios for school bus or buses. 75-3404. School boards may close schools and transport pupils to other schoolsdistrict to support schools of other districts. 75-3405. Contracts for transportation. 75-3406. Requirements as to buses, drivers and operation of school buses. 75-3407. Schedule for paying for individual and bus transportation, rent or board in lieu of bus transportation provided by the district. 75-3408. Attending other than public school. 75-3409. Children eligible to receive transportation aid. 75-3410. Determining residence when in dispute. 75-3411. Measurement of distances in dispute. Transportation matters in controversy-settlement-county trans-75-3412. portation committees. 75-3413. Reimbursements.

75-3414. Reimoursements. 75-3414. Budgets and levies for transportation.

75-3401. Boards of trustees to furnish transportation. The board of trustees of any school district or county high school within the state of Montana may furnish transportation to and from school for all pupils residing within their district, who are enrolled in the public schools of their district, or who have been granted permission to attend a school in another district, and who reside three (3) or more miles distant, over the nearest practical route, from a public elementary or secondary school. Provided, that, school boards may in lieu of transportation furnish supervised correspondence study; supervised home study; room, rent, or board, or individual transportation payments, but any sum expended in lieu of transportation shall not exceed the per pupil cost set up by schedule in section 75-3407; provided, further, that the board of trustees must furnish transportation or services in lieu thereof when directed so to do by the county transportation committee and such direction has been upheld by the state superintendent of public instruction.

75-3402 SCHOOLS

History: En. Sec. 1, Ch. 152, L. 1941; amd. Sec. 1, Ch. 200, L. 1949; amd. Sec. 1, Ch. 189, L. 1951. Earlier acts relating to transportation of school children were: Sec. 1, Ch. 68, L. 1903; re-en. Sec. 877, Rev. C. 1907; amd. Sec. 1, Ch. 40, L. 1911; amd. Sec. 507, Ch. 76, L. 1913; re-en. Sec. 1010, R. C. M. 1921; amd. Sec. 1, Ch. 70, L. 1923; amd. Sec. 1, Ch. 76, L. 1925; amd. Sec. 1, Ch. 77, L. 1927; amd. Sec. 1, Ch. 102, L. 1929; amd. Sec. 1010, R. C. M. 1935.

Collateral References

Schools and School Districts 159, 159½.

79 C.J.S. Schools and School Districts § 475 et seq.

47 Am. Jur., Schools, p. 415, §§ 160 et seq.; p. 420, § 165.

Transportation of school pupils at expense of public. 63 ALR 413; 118 ALR 806 and 146 ALR 625.

One transporting children to or from school as independent contractor, 66 ALR 724.

75-3402. Meaning of the term "transportation." Unless a different meaning is plainly required by the context, "transportation" shall, in this act, mean (1) the actual transporting of pupils who live three (3) or more miles distant from a public school, by bus, rail or otherwise; (2) the providing of any services whereby the school board is relieved of actually transporting such pupils, such as paying parent or guardian for transportation, paying rent or board or any part thereof and providing supervised correspondence study or supervised home study.

History: En. Sec. 2, Ch. 152, L. 1941.

75-3403. School board may operate buses or contract for transportation of pupils—school board may set up depreciation reserve for purchase of replacement buses and two-way radios for school bus or buses. board of trustees shall have the power to purchase, or rent and provide for the upkeep, care, operation, maintenance, insurance, for two-way radios and for school buses; or to contract and pay for the transportation of eligible pupils, such contracts to run for terms not to exceed five (5) years; and provided further, that each district owning a school bus or buses may levy a sufficient number of mills to create a reserve of not to exceed twelve and one-half per cent  $(12\frac{1}{2}\%)$  per year of the original cost of the bus or buses for which the reserve is created; said fund to be kept separate and apart from all other funds, and to be used only for the purchase of the bus or buses needed to replace the bus or buses and twoway radios for which said reserve was created, unless authorized by a majority of the votes cast by the qualified electors of the district at an election called for that purpose. Provided, however, that school district trustees may authorize as standard equipment, the installation of twoway radios in a school bus or buses operating in school districts where weather and road conditions may constitute a hazard to the safety of the school pupil passengers. The two-way radios may be operated on the same frequency as that used by the Montana highway patrol and the sheriff of the county, with their permission and the permission of the federal communications commission wherein said school bus or buses operate, or any frequency assigned for such operation by the commission.

History: En. Sec. 3, Ch. 152, L. 1941; Ch. 52, L. 1955; amd. Sec. 1, Ch. 202, L. amd. Sec. 1, Ch. 163, L. 1951; amd. Sec. 1, 1957.

75-3404. School boards may close schools and transport pupils to other schools—district to support schools of other districts. The board of trus-

tees shall have the power to close any elementary school within the district, and transport the pupils to another elementary school or schools within the district, or to a school or schools in other districts, when the board deems such act to be for the best interests of all the pupils attending school. Trustees of other districts may accept the entrance of children from closed schools to their schools; provided, that whenever a district is thus relieved of the necessity of furnishing schooling for any or all of its pupils, it shall be the duty of the school board of such district to assist in the support of the school which the children of such district are attending, according to the schedule set up in section 75-1630.

History: En. Sec. 4, Ch. 152, L. 1941; amd. Sec. 2, Ch. 189, L. 1951; amd. Sec. 4, Ch. 207, L. 1951.

Transportation in Lieu of Maintaining School

In lieu of maintaining a school, district

may transport children of school age within the district to schools in other districts, paying the necessary or required tuition. State ex rel. Knaup v. Holland, 132 M 569, 319 P 2d 516, 517.

75-3405. Contracts for transportation. No school money shall be paid for transportation services, or for anything in lieu of transportation, to any person, or firm, who or which does not hold a legal contract with the trustees of the district; and no payments shall be made for any days that transportation, or services in lieu thereof, for the children mentioned in the contract, is not actually furnished unless such failure to perform is excused by the board of trustees for reasons not under the control of said person or firm.

Contract forms, for transportation, with minimum requirements, shall be prepared by the state superintendent of public instruction; and the county superintendent shall furnish the contract blanks to district clerks. All contracts for transportation, or anything in lieu of transportation, must be drawn in triplicate, signed by both the district clerk and the chairman of the school board, and by the parents or legally appointed guardian of the children receiving transportation; except that when transportation is furnished by a carrier, the contract shall be signed by the district clerk, the chairman of the school board and by the carrier. Each contract for individual transportation shall contain a signed affidavit by the parent or guardian of the child, as to his place of residence. One copy must be filed in the office of the county superintendent of schools, one copy retained by the district clerk and one copy given the person furnishing such service. The county superintendent of schools shall send a notice to the county treasurer, immediately after receiving a copy of each contract, which notice shall acquaint the county treasurer with the names of the contracting parties, the number of the district paying transportation, and the amount of the contract.

The county treasurer shall not honor any warrant drawn in excess of the total monthly, or six-weeks transportation payment, allowed by contract, and positively shall honor no warrant drawn upon a district which does not hold a contract. Trustees shall not pay any contract installment, for transportation or services in lieu thereof, before such service has been rendered nor before the district clerk receives a report from the superin-

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tendent, principal or teacher of the school where the children receiving transportation are attending. Such report must contain a record of attendance for the monthly or six-weeks transportation period being paid for; and must state the actual number of days children were actually transported, provided, that, such reports shall not apply to regularly contracted bus transportation. It shall be the duty of all public school teachers to make such reports as are hereby required.

No parent or guardian may be paid transportation for any day that children, living three (3) or more miles from school, walk to and from school. Payments for transportation furnished one way, on any school day, may be allowed; and the payment for that day shall not exceed one-half (½) of the amount stipulated in the contract, for one (1) day. Before contracts are awarded to any person, concern, or common carrier, the board shall secure bids, by publishing a call for bids in three (3) issues of a newspaper having general circulation in the county, during a period of twenty-one (21) days prior to the letting of the contract; provided, that, in the event there is no newspaper published in the county, three (3) notices, calling for bids, shall be posted in three (3) separate and conspicuous places in the district. The board shall let the contract to the lowest responsible bidder; provided, that the board shall have the right to reject any and all bids.

History: En. Sec. 5, Ch. 152, L. 1941; amd. Sec. 3, Ch. 189, L. 1951; amd. Sec. 1, Ch. 196, L. 1953.

# Common Carriers

The requirement that the board of trustees call for bids before awarding contracts to "common carriers" for transportation of pupils could not be construed so as to include all carriers as distinguished from parents or guardians. In re Trans-

portation of School Children, 117 M 618, 622, 161 P 2d 901.

A "common carrier" is a carrier who holds himself out to take goods, chattels, or persons for hire for all persons indiscriminately, as distinguished from "private carrier" who agrees by special agreement or contract to transport persons or property from one place to another. In re Transportation of School Children, 117 M 618, 622, 161 P 2d 901.

75-3406. Requirements as to buses, drivers and operation of school Any person or persons having a contract to transport school children, or any school district owning and operating its own school buses, shall comply in every respect with the regulations of the state board of education for the operation and safety of school buses; provided, that, the board of trustees may require added safeguards, by supplementing in the contract the regulations of the state board of education, with additional regulations relating to bus specifications, age of drivers, liability insurance and operating speed; provided, that a district, owning and operating its own bus or buses, must carry automobile bodily injury and liability insurance, with limits of liability in the amount of not less than \$7,500.00 each person and \$50,000.00 each accident. Such limits must be carried on each bus operated, if there be more than one; and further provided that every driver of a bus or other vehicle on an established and approved school bus route shall have completed a standard first-aid course and shall hold a valid standard first-aid certificate from an authorized instructor. Rules and regulations governing the issuance of this certificate shall be formulated by the state superintendent of public instruction, provided, however, that this requirement may be suspended pending reasonable opportunity for securing the first-aid course and certificate.

History: En. Sec. 6, Ch. 153, L. 1941; amd. Sec. 4, Ch. 189, L. 1951; amd. Sec. 1, Ch. 230, L. 1953.

- 75-3407. Schedule for paying for individual and bus transportation, rent or board in lieu of bus transportation provided by the district. The board of trustees may pay to the parents or legally appointed guardian of each child, eligible to transportation under this act, board or rent or provide transportation for the child, the amount called for under the following schedule in lieu of furnishing bus transportation.
- (a) Three (3) and less than five (5) miles, one (1) child, thirty cents (\$0.30) per day for each day attended; for each additional child twelve cents (\$0.12), but not to exceed sixty-six cents (\$0.66) per day for all children residing in the same household and attending a public school.
- (b) Five (5) to less than seven (7) miles, one (1) child, thirty-six cents (\$0.36); for each additional child twelve cents (\$0.12) but not to exceed eighty-four cents (\$0.84) per day for all children residing in the same household and attending a public school.
- (c) Seven (7) to less than twelve (12) miles, one (1) child, forty-eight cents (\$0.48); for each additional child twelve cents (\$0.12); but not to exceed one dollar and eight cents (\$1.08) per day for all children residing in the same household and attending a public school.
- (d) Twelve (12) miles or over, one child, sixty cents (\$0.60) per day; for each additional child twelve cents (\$0.12); but not to exceed one dollar and twenty cents (\$1.20) per day for all children residing in the same household and attending a public school.
- (e) School children living within one and one-half  $(1\frac{1}{2})$  miles of an established bus route shall not be eligible for transportation aid, other than the services of the established route. Children living more than one and one-half  $(1\frac{1}{2})$  miles but less than three (3) miles from such route shall receive transportation aid of one-half  $(\frac{1}{2})$  the rates given in subsection (a) of the schedule set up in this section. Children living three (3) miles or more from such bus route shall receive transportation aid on the basis provided in the schedule fixed in this section,
- (f) This schedule shall not be so construed as to permit elementary and high school pupils to be counted as coming from separate households, except, when said children are compelled to attend public schools in entirely separate communities, and cannot thus be transported in the same conveyance, nor cared for in the same community.
- (g) The limitations for this act shall not apply to transportation within the city or school district when the board of trustees finds it economical, convenient or desirable to transport children for a distance less than three (3) miles in order to relieve congestions in a school building or to prevent the erection of new buildings, or when children live on an established school bus route and less than three (3) miles from school.

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(h) In isolated cases where due to isolation pupils must live away from home to attend school or due to excessive distances, impassable roads or special circumstances where parents cannot transport their children payments in accordance with the above schedule are inadequate and adherence to such schedule would subject the parents or guardians of a school child or the child himself to financial or physical hardship the schedule may be altered by the county transportation committee subject to written approval by the state superintendent of public instruction; provided, that, in no case shall the altered schedule allow more than thirty dollars (\$30.00) per month for one child, twelve dollars (\$12.00) per month for the second child, and six dollars (\$6.00) per month for each child in addition to two (2) from the same family. A degree of isolation chart shall be provided school district trustees by the state superintendent of public instruction to serve as a guide in requesting increased transportation due to isolation.

The applicant for such alteration of the schedule shall submit a written statement in duplicate to the board of trustees of the district which is obligated to make payment for transportation or services in lieu thereof, and to the county transportation committee through the county superintendent, stating the special facts and circumstances upon which he relies to justify the alteration. The county transportation committee shall act on the application regardless of the approval or disapproval by the board of trustees of the district wherein such application was initiated.

If such application be approved by the county transportation committee and alterations of the schedule will result in increased payments to be made by the state to the district, the application and pertinent data and the decision of the county transportation committee shall be submitted to the state superintendent of public instruction for final approval or disapproval.

- (i) Except as provided above, this schedule shall not be altered by any authority, other than the legislative assembly of the state of Montana.
- (j) Schedule of maximum expenses for bus transportation to be reimbursed from state funds. The maximum expenditures which may be reimbursed to any school district from the state public school equalization fund for school bus transportation furnished by any school district either by the operation of a school bus or buses, owned or hired by it, or by contract with a school bus operator, over an official bus route, established by the board of trustees, approved by the county transportation committee and the state superintendent of public instruction and in a vehicle approved under the regulations of the state board of education by the state highway patrol shall be as follows:
- 1. For a vehicle having a rated capacity of six (6) pupils or less, twelve cents (\$0.12) per bus mile.
- 2. For a vehicle having a rated capacity of seven (7) to eleven (11) pupils inclusive, fifteen cents (\$0.15) per bus mile.
- 3. For a vehicle having a rated capacity of twelve (12) to thirty (30) pupils inclusive, twenty cents (\$0.20) per bus mile.
- 4. For a vehicle having a rated capacity of over thirty (30) pupils the rate established by subsection three (3) above plus the sum of one-half

cent (\$0.005) per bus mile traveled over the official route for each additional pupil rating in excess of thirty (30).

- 5. The rated capacity will be established by regulations adopted by the state board of education and for reimbursement purposes shall not exceed the number of pupils transported by twenty-five per cent (25%).
- (k) No child attending public elementary school shall be required by any school board to ride a school bus, under average road conditions, more than one (1) hour per trip of said child in said school bus, without the consent of the child's parents or guardian.
- (1) For the purpose of developing economy and efficiency in the transportation of school children, the state superintendent of public instruction shall be authorized with the approval of the state board of education to employ a competent person as supervisor of transportation. Not less than one-half  $(\frac{1}{2})$  of his time shall be devoted to this service. The other time may be spent as provided by law or as otherwise provided. His salary and expenses shall be paid in proportion to time spent as transportation supervisor, from the transportation funds as approved by the state board of education.

History: En. Sec. 7, Ch. 152, L. 1941; L. 1949; amd. Sec. 5, Ch. 189, L. 1951; amd. Sec. 1, Ch. 189, L. 1943; amd. Sec. 1, Ch. 191, L. 1955.

1, Ch. 116, L. 1945; amd. Sec. 2, Ch. 200,

75-3408. Attending other than public school. Any child attending other than a public school may secure from the clerk of the school district a permit to ride on a public school bus, provided, that, for such service the parents or guardian of the child shall pay their proportionate share of the cost of such transportation.

History: En. Sec. 8, Ch. 152, L. 1941.

75-3409. Children eligible to receive transportation aid. Any child, not younger than six (6) nor older than twenty-one (21) years, whose residence is in the state of Montana, three (3) or more miles distant, over the shortest practical road, from the nearest open public elementary or public secondary school (disregarding district and county boundary lines) of the state of Montana; or whose residence is one and one-half (1½) or more miles, over the shortest practical road, from the nearest point of an established public school bus route, is entitled to transportation for each day he attends a Montana public school; provided, that, such child must reside with his parents or legally appointed guardian, and his parents or guardian must maintain a permanent home within the boundaries of the district paying transportation. Provided, further, that his family or part of his family may move into another district for school purposes; and he may live with his family or a part of his family in another district for the duration of the school term for which he is collecting transportation, or he may board and room away from home for the duration of the school term. Provided, further, that the terms of section 75-3405 must be carried out before he is eligible to receive transportation.

History: En. Sec. 9, Ch. 152, L. 1941.

75-3410. Determining residence when in dispute. The members of the board of trustees and the county superintendent of schools shall in-

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vestigate and determine residence whenever a disagreement arises over eligibility to receive transportation aid. In determining such residence for transportation purposes the board of trustees and the county superintendent of schools shall use the same criteria as must be used to determine residence for tuition purposes in accordance with the provisions of sections 75-1630, 75-4230 and 83-303; provided that, in any year when any district or county has been determined to be responsible for paying tuition for any child in accordance with the provisions of sections 75-1630, 75-4230 and section 83-303, the district or county determined as the residence of the child for tuition purposes shall be the residence of such child for transportation purposes. Provided, that, anyone feeling dissatisfied with the decision of the trustees and county superintendent of schools shall have the right to appeal to the state superintendent of public instruction.

History: En. Sec. 10, Ch. 152, L. 1941; amd. Sec. 1, Ch. 215, L. 1961.

75-3411. Measurement of distances in dispute. Distances in dispute, between a residence and the nearest open school (disregarding district and county boundary lines) must be measured with a car, equipped with an accurate speedometer; and such car must be driven under the supervision of the county superintendent of schools. A member of the district school board, paying the transportation, or the district school clerk, and a parent or guardian of the child to be transported, may accompany the officer measuring the route. The measurement must begin one (1) rod from the family home, and end one (1) rod from the entrance of the school grounds nearest the route. The road must be reasonably passable by motor car during the time school is in session; provided, that, the acts of nature such as temporary rains, floods, snow, etc., shall not disqualify the route: provided, further, that routes impassable by car, over which children may ride horses, or be transported by horsedrawn vehicles in reasonable comfort, may be declared the nearest practical routes by the board of county commissioners.

History: En. Sec. 11, Ch. 152, L. 1941.

- 75-3412. Transportation matters in controversy—settlement—county transportation committees. All transportation matters in controversy shall be settled by the county transportation committee hereinafter defined. Provided, that, if the applicant for transportation feels that he has not met with justice in the decision of the county transportation committee, he may appeal to the state superintendent of public instruction, in which case the county superintendent shall send to the state superintendent of public instruction all data and evidence connected with the case.
- (a) To facilitate and administer the policies relating to the transportation of school pupils, there are hereby created county transportation committees. Such committees shall be organized in each county and shall consist of the county superintendent of schools, the chairman of the board of county commissioners, or such other member of the board as he may designate, one representative chosen by each high school board of trustees, who shall be a member of the board, or the high school superintendent, and a trustee from the elementary districts in each high school district

who shall be selected at a joint meeting of the elementary district boards within the high school district. In counties which do not have high school districts, the elementary district representatives shall be selected at a county-wide meeting of the boards of trustees of the elementary districts of the county in a number equal to those of the high school boards, excepting that in no case shall an elementary district member of the transportation committee be a member of a school board which is both a high school board and an elementary district board. Provided, however, that the county transportation committee shall have not less than five members and that where there is only one high school board in the county that both the high school board and the elementary districts may select two representatives. The county superintendent of schools shall be chairman of this committee and a quorum shall consist of two-thirds (2/3) of the membership. It shall be the duty of the county transportation committee to approve bus routes and applications for increased transportation payments, and to act in all controversies resulting from transportation matters.

When the transportation interests of a district are affected by the actions and interests of the county transportation committee of another county, it shall be represented on the county transportation committee of both counties, but shall have a voice only in matters affecting its high school.

Any school district which objects to the particular bus route or transportation area to which it has been assigned may upon vote of its board of trustees signifying such objection, be assigned to an adjoining district or transportation area which maintains a public high school, provided that the board of trustees of the latter school is willing to have such district assigned to its area. In case of a continued disagreement, on the initiative of a petition signed by twenty per cent (20%) of the qualified electors of any district indicating dissatisfaction with the area to which it has been assigned the board of trustees shall place the matter of which area to belong to at the trustee election in April; provided, however, that if such pupils are not transported to the nearest high school, the state reimbursement shall be limited to the amount which would be paid if they were transported to the nearest high school, unless such attendance has been approved by the county transportation committee and the state department of public instruction. The state board of education through the state superintendent of public instruction shall formulate such rules and regulations as may be necessary for establishing high school transportation areas for determining residence of pupils, and for carrying out the purposes of this act; provided, however, that such regulations shall not prevent or deny to any parent the right to transport or arrange for transportation of his children at his own expense to the high school of any district willing to accept them. Any patron of a school district or portion of a school district dissatisfied with transportation matters in his county shall have the right of appeal to the county transportation committee and to the state superintendent of public instruction.

History: En. Sec. 12, Ch. 152, L. 1941; Ch. 201, L. 1953; amd. Sec. 1, Ch. 105, L. amd. Sec. 6, Ch. 189, L. 1951; amd. Sec. 1, 1955.

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- 75-3413. Reimbursements. (a) Each school district and each county high school meeting the requirements of this act shall be entitled to reimbursement from such moneys in the state public school equalization fund as may be appropriated by the legislature for transportation, in an amount not to exceed one third (1/3) of the schedule provided for transportation, or services rendered in lieu of transportation, semiannually on presentation to the state superintendent of public instruction, through the office of the county superintendent of schools, of certified claims for such reimbursement using for such purpose the forms provided by the state superintendent of public instruction. A school bus route which travels through several school districts shall have the county and state reimbursement prorated among the school districts which are served by this bus route by the county transportation committee and that the schedules provided in this act for individual transportation and bus transportation or services in lieu thereof, shall be used instead of any schedule which may have been heretofore or may hereafter be fixed and promulgated by the state board of education. In determining the cost of transportation or services in lieu thereof, no amount shall be included except those which have been paid out by a school district or county high school in the regular manner provided for the payment of other financial obligations for the maintenance of their schools.
- (b) Each school district maintaining one or more elementary schools, or providing for the transportation of its elementary pupils to attend school in another district, meeting the requirements of this act, shall be entitled to reimbursement from the county common school fund provided by the tax levy authorized and made in accordance with the provisions of section 75-3706, as amended, of one-third (1/3) of the schedule provided for transportation, or services rendered in lieu thereof, semiannually, such reimbursement to be made on duplicates of the certified claims for reimbursement by the state. No apportionment shall be made of such common school fund in either June or December in each year until after such reimbursements therefrom have been made to such school districts.
- (c) The limitations on state reimbursement set forth in this act shall not apply to special transportation provided in connection with special education programs in accordance with the provisions of section 75-5003. History: En. Sec. 13, Ch. 152, L. 1941; L. 1949; amd. Sec. 7, Ch. 189, L. 1951; amd. Sec. 2, Ch. 189, L. 1943; amd. Sec. 3, Ch. 200, amd. Sec. 1, Ch. 242, L. 1961.
- 75-3414. Budgets and levies for transportation. (a) The board of trustees of any school district maintaining an elementary school, or schools, or providing for the transportation of its pupils to attend an elementary school or schools, outside the district, or furnishing services in lieu thereof, shall have the authority and it shall be its duty to provide and adopt a complete transportation budget therefor, which budget shall show in detail and by items the estimated expenditures and receipts for the school year for which it is provided. The estimated expenditures may include a contingency item for the purpose of enabling the trustees of the district to fulfill any obligation to provide transportation in accordance

with the provisions of the transportation act for any pupils not residing in the district at the time of adoption of the transportation budget who subsequently become residents of the district during the budget year. The amount of such contingency item shall not exceed ten per cent (10%) of the total amount of the regularly budgeted expenditures of the district arrived at in accordance with the schedule established in section 75-3407, provided, however, that when ten per cent of the budgeted schedule amount will provide less than one hundred dollars (\$100.00), the ten per cent limitation shall not apply and the district may budget for a contingency item of up to but not exceeding one hundred dollars (\$100.00). The form of such transportation budget shall be prescribed by the state superintendent of public instruction. The total amount of the estimated expenditures, as shown by such transportation budget, shall be shown and included in the elementary school budget form and the estimated receipts from reimbursements, as shown in such transportation budget, shall be shown and included in the elementary budget form as provided. A copy of the elementary transportation budget adopted, together with a duly signed copy of each and every contract form pertaining thereto, shall be transmitted by the county superintendent of schools to the state superintendent of public instruction at the same time copies of the elementary school budgets are required to be so transmitted.

- (1) When the total elementary transportation budget has been presented in detail on approved forms including duly signed contract forms for the contracting, operation, maintenance, rent or purchase of school buses, individual transportation, and increased transportation due to isolation, and after deducting all estimated receipts including reimbursements, the balance of the budget shall be paid out of receipts from a tax levied upon all the taxable property of the school district.
- The board of trustees of every school district maintaining a high school, or furnishing transportation for its pupils to another high school, or services in lieu thereof, and the board of trustees of every county high school, shall have the authority and it shall be its duty to provide a complete transportation budget therefor, including duly signed contract forms for the contracting, operation, maintenance, rent or purchase of school buses, individual transportation, and increased transportation due to isolation, or any service in lieu of transportation. The budget shall show in detail and by items the estimated expenditures and receipts, including the state transportation reimbursements, for the school year for which it is provided. The estimated expenditures may include a contingency item for the purpose of enabling the trustees of the high school to fulfill any obligation to provide transportation in accordance with the provisions of the transportation act for any high school pupils not residing in the high school territory under the jurisdiction of the trustees at the time of adoption of the transportation budget who subsequently become residents of said territory during the budget years. The amount of such contingency item shall not exceed ten per cent (10%) of the total amount of the regularly budget[ed] expenditures of the high school arrived at in accordance with the schedule established in section 75-3407, provided, however, that when ten per cent of the budgeted schedule amount will provide

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less than one hundred dollars (\$100.00), the ten per cent limitation shall not apply and the high school may budget for a contingency item of up to but not exceeding one hundred dollars (\$100.00). The form of such transportation budget shall be prescribed by the state superintendent of public instruction. A copy of the high school transportation budget adopted for each high school, together with a duly signed copy of each and every contract form pertaining thereto, shall be transmitted by the county superintendent of schools to the state superintendent of public instruction at the same time copies of the final high school budgets are required to be so transmitted. For each high school transportation budget arrived at according to the schedule set up in section 75-3407, the amount remaining after deducting all estimated local receipts, including cash balances and state transportation reimbursements from the total amount required for the transportation budget according to the schedule, shall be the amount required to be raised by tax levy for such high school transportation budget, and the total of all such amounts required to be raised by tax levy for all such high school transportation budgets shall be the total amount required to be raised by county-wide transportation levy, and the county commissioners, except as hereinafter provided, shall make a county-wide levy of such number of mills as will raise such total amount; provided that this amount shall not be more than two-thirds (2/3) of the total of each high school transportation budget according to the schedule as set forth in section 75-3407. The amount remaining in each high school transportation budget over and above the amount arrived at according to the schedules in section 75-3407, as amended, shall be the amount required to be raised by tax levy for each such high school transportation budget and all such amounts required to be raised by tax levy for each such high school transportation budget shall be the total amount required to be raised by high school transportation levy on the high school district if there be one; and in case of a county high school by a county levy, excluding those districts maintaining high schools, otherwise on the common school district, of which each particular high school is a part, and the county commissioners shall make a levy of such number of mills as will raise such needed amount: provided that the amount budgeted for high school transportation in any high school budget shall not be deemed or considered as a part of or included within the maximums for high school budgets as fixed and determined by chapter 199, Laws of 1949, as amended, and the county-wide high school transportation levy herein provided for shall not be deemed or construed as a part of the county-wide high school levy authorized by section 75-4516.1, unless the trustees making such budget so desire and the board of county commissioners find that such high school transportation levy is not required to raise the amount necessary for such budget for all purposes including transportation or services in lieu thereof.

History: En. Sec. 14, Ch. 152, L. 1941; amd. Sec. 3, Ch. 189, L. 1943; amd. Sec. 8, Ch. 189, L. 1951; amd. Sec. 1, Ch. 126, L. 1961.

# Elementary School Outside District

Transportation to another elementary school outside the district is paid from a budget of the district. State ex rel. Knaup v. Holland, 132 M 569, 319 P 2d 516, 517.

High School Pupils

Transportation for high school pupils is provided at the expense of the state

and county and not by the school district. State ex rel. Knaup v. Holland, 132 M 569, 319 P 2d 516, 517.

# CHAPTER 35

## FREE TEXTBOOKS

Section 75-3501. Free textbooks to be provided.

75-3502. Repealed.

75-3503. Textbooks—license to sell—conditions.

75-3504. Same—failure to comply—duties of county superintendents.

75-3505. Same—special or abridged editions.

75-3506. Same—attempted combinations illegal—duty of attorney general. 75-3507. Same—failure to place sample on file with the state superintendent of public instruction—penalty.

75-3508. Same—offering of emolument, money or valuables illegal.

75-3509. Same—lists furnished boards of education—restrictions on purchase—filing—time effective.

75-3510. Adoptions—by administrative officers—period.

75-3511. Construction—vested rights.

75-3501. (1198) Free textbooks to be provided. In all school districts of the state, and in all high schools, free textbooks shall be furnished for the use of the pupils thereof, and it shall be the duty of all school boards and school trustees to purchase the textbooks required for the use of the pupils in attendance thereon, at the expense of said districts, and said books shall be loaned to said pupils free of charge, subject to such rules and regulations as such trustees shall prescribe, provided, that said free textbooks shall be sold at cost for the use of any pupils whose parents or guardians may request same.

History: En. Sec. 1811, Ch. 76, L. 1913; amd. Sec. 1, Ch. 12, L. 1917; re-en. Sec. 1198, R. C. M. 1921.

# References

Mills v. Stewart, 76 M 429, 443, 247 P 332, 47 ALR 424.

## Collateral References

Schools and School Districts 168.
79 C.J.S. Schools and School Districts
489.

Sectarianism in schools. 5 ALR 866; 141 ALR 1144 and 45 ALR 2d 742.

# 75-3502. (1199) Repealed—Chapter 79, Laws of 1961.

Repeal

This section (Sec. 1812, Ch. 76, L. 1913; Sec. 1, Ch. 65, L. 1921; Sec. 1, Ch. 88, L. 1925), relating to tax levy for textbooks, was repealed by Sec. 1, Ch. 79, Laws 1961.

75-3503. Textbooks—license to sell—conditions. Before any person, company, or corporation shall offer to any school district any textbook for adoption, sale or exchange, in the state of Montana, said person, company, or corporation shall comply with the following conditions:

First: Such person shall file a copy of such textbook in the office of the state superintendent of public instruction, with a sworn statement of the list price; the lowest wholesale price; and the lowest exchange price that will be given when old books in the same subject and of the like kind and grade, but of a different series, are received in exchange, such exchange price to be based on a three (3) year adoption period. Such prices are to be quoted FOB Chicago, FOB San Francisco, FOB any other city from which publishers may ship books, and FOB a textbook depository in Montana.

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Second: Such persons shall file with the state superintendent of public instruction a written agreement, (1) to furnish said book or books to any school board in the state of Montana at the said lowest price so filed, and to maintain said prices uniformly throughout the state; (2) to reduce such prices automatically in Montana whenever reductions are made elsewhere in the United States; and (3) to guarantee that at no time shall any book so filed by such persons, be sold in Montana at a higher price than is received for such book elsewhere in the United States under similar conditions of transportation and marketing.

Third: Such persons shall file and maintain with the secretary of state a surety bond for not less than two thousand dollars (\$2,000.00) and not more than ten thousand dollars (\$10,000.00), such bond to be in an amount to be fixed by the state superintendent of public instruction and to run to the state of Montana, to be conditioned on the faithful performance of all things on the part of such persons to be performed under this act and such bond to be approved by the attorney general. Upon compliance with the foregoing conditions the state superintendent of public instruction shall issue a license to any such person to sell such textbooks to school districts in the state of Montana.

Fourth: License fees. The person receiving such license shall pay a fee of one dollar (\$1.00) for each book listed; provided that in the case of several books presented by one publisher in the same subject under the same series head for any one grade, the maximum filing fee in such case shall not exceed three dollars (\$3.00). Such moneys received through payment of said filing fees shall be used to defray all expenses incurred under the provisions of this act. Provided that any surplus which might exist at the end of any biennium shall be transferred to the state public school general fund.

History: En. Sec. 2, Ch. 138, L. 1941.

75-3504. Same—failure to comply—duties of county superintendents. If in any case, such persons shall furnish to any district, books inferior in any particular to the samples on file with the state superintendent of public instruction, or charge a higher price than that filed with the state superintendent of public instruction, or charge a higher price than the same are sold for elsewhere in the United States, then it shall be the duty of the county superintendent of schools on his own initiative or on written complaint filed with him by any authorized representative of any school district in Montana, to inform the state superintendent of public instruction of the failure of any such persons to comply with the terms of his contract. The state superintendent of public instruction shall thereupon notify such person of said complaint, and if such person shall disregard the notification and/or fail to comply immediately with the terms of the agreement filed with the state superintendent of public instruction, then the bond of such person shall be forfeited, and the attorney general shall upon written request of the state superintendent of public instruction proceed to collect by legal action the full amount of the bond of such person, and any amount so recovered shall be paid into the state public school general fund.

History: En. Sec. 3, Ch. 138, L. 1941.

75-3505. Same—special or abridged editions. Whenever the publisher shall prepare an abridged or special edition of any of his books listed with the state superintendent of public instruction and shall supply such special edition elsewhere at a lower wholesale price than the wholesale price for the edition filed with the state superintendent of public instruction, the publisher must agree to furnish such special edition at the wholesale price at which it is furnished elsewhere, so long as it is supplied at the said lower price anywhere outside of Montana; and it shall be understood that the bond given by the publisher shall cover this provision as to special editions. In case an action is brought on such bond, the state, if successful, shall recover the full amount of the bond, which amount shall be paid into the state public school general fund.

History: En. Sec. 4, Ch. 138, L. 1941.

75-3506. Same—attempted combinations illegal—duty of attorney general. If at any time any publisher shall enter into any understanding, agreement or combination to control the prices or to restrict competition in the adoption or sale of school books, such conduct shall work a forfeiture of his bond and the attorney general shall institute and prosecute legal proceedings for the forfeiture of the bond of such publisher, and for the revocation of his license to sell school books in the state.

History: En. Sec. 5, Ch. 138, L. 1941.

75-3507. Same—failure to place sample on file with the state superintendent of public instruction—penalty. Any publisher who shall sell or offer for sale or adoption to any school district in the state, school textbooks of any kind without first placing samples of the same on file and obtaining a license therefor from the state superintendent of public instruction shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than five hundred dollars (\$500.00), and not more than two thousand dollars (\$2,000.00).

History: En. Sec. 6, Ch. 138, L. 1941.

75-3508. Same—offering of emolument, money or valuables illegal. No publisher of school textbooks nor agent of such publisher shall offer or give any emolument, money or other valuable thing, or inducement, to any member of any school board or school official or teacher connected with any of the schools of Montana, for his vote, or promise to vote, or for the use of his influence for the adoption of any school textbook to be used in any of the schools of this state.

No member of any school board or school official connected with any of the public schools of Montana shall accept any emolument, money, or other valuable thing or any other inducement from any publisher, or agent of any publisher, for his vote, or promise to vote, or for the use of his influence for the adoption of any school textbooks.

Any publisher of school textbooks, or agent of such publisher, or any member of any school board or public school official in the state of Montana, who violates any of the provisions of this section, on conviction thereof, shall be punished as for a misdemeanor; and any member of a school board

or public school official shall, in addition, be removed from his official position.

Nothing in this section shall be construed to prevent any person, publisher, or publisher's agent from supplying for purpose of examination necessary sample copies of school textbooks to any member of a school board, school official or teacher.

History: En. Sec. 7, Ch. 138, L. 1941.

75-3509. Same—lists furnished boards of education—restrictions on purchase—filing—time effective. The state superintendent of public instruction shall annually, and at such other time or times as he may deem expedient, beginning on or before August 1, 1941, send to each school official within the state a copy of all lists of school textbooks then on file in his office, showing the prices at which such books may be purchased. Books shall be removed from the list in any one of the following ways: (a) upon written request of the publisher thereof; (b) by action of the state superintendent of public instruction after the book has been on the list for a period of ten (10) years, but such action shall not prevent the publisher from again officially filing such book for listing; (c) by any failure or lapsation of the bond herein provided for.

History: En. Sec. 8, Ch. 138, L. 1941.

Adoptions—by administrative officers—period. On and after the enactment of this law, textbooks for all schools and for all school courses shall be selected by the district superintendent, or by the principal of the school if there be no district superintendent in charge of such school, in either case with the approval of the board of trustees. The textbooks for one (1) and two (2) room schools in districts that have no superintendent or principal other than county superintendent shall be selected by the county superintendent of schools on recommendation of a special committee, composed of three (3) persons actively engaged in public school work during the time of their appointment by the county superintendent of schools. These adoptions shall be for a minimum period of three (3) years. Provided that basal texts shall not be adopted in more than three (3) subjects in any one (1) year.

History: En. Sec. 9, Ch. 138, L. 1941.

75-3511. Construction—vested rights. This act shall not be so construed as to affect any vested rights now in existence pertaining to the sale of textbooks, nor to apply to the listing and purchase of library books.

History: En. Sec. 10, Ch. 138, L. 1941.

# CHAPTER 36

UNIFORM SYSTEM OF FREE PUBLIC SCHOOLS-STATE SUPPORT -SCHEDULE OF CONTRIBUTIONS

Section 75-3601 to 75-3609. Repealed.

75-3610. Uniform system of free public schools.

75-3611. Definitions—schedules of financial program.

75-3612. Foundation program.
75-3613. State common school equalization fund—change of name.

- 75-3614. State board of education to administer state public school equalization fund.
- 75-3615. State superintendent of public instruction to compile data and make reports concerning state school equalization fund.

75-3616. Distribution of funds—reports may be required.

- 75-3617. Application for approval as isolated schools—circumstances to be considered in acting upon application.
- 75-3618. Distribution of money available to districts—formula for apportionment of county funds.

75-3619. Formula for distribution of state funds.

75-3620. State superintendent to give notice if state fund inadequate.

75-3621. Resolution to issue warrants—hearing.

- 75-3622. Authorization to issue warrants.
- 75-3623. Method of payment of warrants.

# 75-3601 to 75-3609. (1200.1 to 1200.9) Repealed—Chapter 199, Laws of 1949.

# Repeal

These sections (Secs. 1 to 9, Ch. 175, L. 1935, Sec. 4 amended by Sec. 1, Ch. 38, L. 1937; Sec. 1, Ch. 169, L. 1939), relating to a system of state contributions

to public schools, were repealed as Secs. 1200.1 to 1200.9, Revised Codes, 1935, by Sec. 23, Ch. 199, L. 1949, effective December 1, 1949.

75-3610. Uniform system of free public schools. A uniform system of free, public schools, sufficient for the education of, and open to all children of the state of school age shall be established and maintained throughout the state of Montana. The state shall contribute to and aid in the support of such schools upon the basis of financial need for state aid of the several school districts of the state, which needs shall be determined upon the availability to them of funds from the regular sources of income of such school districts, in accordance with this act and computed upon the schedules herein set forth setting up foundation financial programs for elementary and secondary schools.

History: En. Sec. 1, Ch. 199, L. 1949. 78 C.J.S. Schools and School Districts \$ 13.

# Collateral References

Schools and School Districts 11.

Definitions—schedules of financial program. The term "average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending a public school, or attending public schools in a school district as a whole, which average number shall be computed by dividing the sum of the aggregate days of attendance by regularly enrolled pupils and the aggregate days of absence by regularly enrolled pupils during the last completed school year, by the number one hundred eighty (180); provided that attendance for a part of a morning session or part of an afternoon session shall be counted as one-half  $(\frac{1}{2})$  day's attendance in either case, and provided further, when any regularly enrolled pupil has been absent, with or without excuse, for more than three (3) consecutive school days in such school year, his absence after the third day and until his return to school shall not be included in the aggregate days of absence. The average number belonging of secondary pupils of a school district or of elementary pupils of a school district does not include the pupils of any high school or of any elementary school which has not been accredited by the state board of edu75-3612 SCHOOLS

cation. Pupils of a junior high school which has been duly approved and accredited as such by the state board of education are to be deemed secondary school pupils for the purpose of computing average number belonging of the district in which the junior high school is situated.

Any school district may reopen a school which was not in operation the previous year, which such reopening is approved by the county budget board and the state superintendent of public instruction, and when the county superintendent estimates the probable enrollment for such school to be at least five (5), and the parents of at least three (3) of these five (5) children petition for such reopening; such approved reopened school shall be eligible for county and state aid on its foundation program. Any school district which opens a new school shall comply with at least the minimum requirements for reopening a closed school as herein provided, and no foundation program shall be established for any new school not meeting the minimum requirements for opening.

Should a school district anticipate an increase in ANB, above the normal state-wide increase of the past year, due to the closing of any private or public school in the district or in neighboring districts, such district shall be allowed an increase in ANB for budget purposes, based on an estimate arrived at by the district superintendent, board and county superintendent and approved by the state superintendent.

The terms, "minimum foundation program" and "foundation program," shall mean the amount required to operate and maintain an adequate and efficient school, as fixed and established by the schedules of minimum operating revenues set forth in section 75-3612.

The term "isolated school," shall mean an elementary school having an ANB of eight (8) or less pupils, the maintenance and operation of which as an isolated school has been approved in the manner hereinafter provided in section 75-3617; and the term, "isolated high school," shall mean a high school having an ANB of twenty-four (24) or less pupils, the maintenance and operation of which as an isolated school has been approved in the manner hereinafter provided in section 75-3617.

The term, "nonisolated school," shall mean an elementary school having an ANB of less than nine (9) pupils, which has not been approved as an isolated school; and the term, "nonisolated high school," shall mean a high school having an ANB of less than twenty (20) pupils, which has not been approved as an isolated high school.

History: En. Sec. 2, Ch. 199, L. 1949; Ch. 207, L. 1953; amd. Sec. 1, Ch. 104, amd. Sec. 1, Ch. 107, L. 1951; amd. Sec. 1, L. 1961.

75-3612. Foundation program. The moneys coming into said state public school equalization fund shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt requirement, and for the payment of any and all costs and expense incurred in connection with any adult education program, kindergarten, recreation program, school lunch and cafeteria program, new buildings, new grounds, and transportation, in accordance with the following schedules:

# Elementary Schools

- (1) For each elementary school having eight (8) or fewer pupils and which, upon the request of the board of trustees of the district, is approved as an isolated school, the district shall receive three thousand three hundred dollars (\$3,300.00), and if said school is not approved as an isolated school, then it shall receive seventeen hundred dollars (\$1,700.00).
- (2) Schools with an ANB in excess of eight (8) but less than eighteen (18) pupils, shall receive three thousand three hundred dollars (\$3,300.00) plus one hundred twenty-five dollars (\$125.00) per pupil on the basis of average number belonging over eight (8).
- (3) Schools having an ANB of eighteen (18), but less than forty-one (41), shall receive a maximum of forty-five hundred fifty dollars (\$4,550.00), plus forty-one hundred dollars (\$4,100.00) provided two (2) teachers are regularly employed as full-time teachers in such school, plus fifty dollars (\$50.00) for each ANB over eighteen (18); forty-five hundred fifty dollars (\$4,550.00) shall be the maximum for any one-teacher school, plus fifty dollars (\$50.00) for an ANB over eighteen (18), not to exceed an ANB over twenty-five (25).
- (4) Schools having an ANB in excess of forty (40) will be guaranteed funds only on the basis of the total pupils (ANB) in the district for elementary pupils as follows:

For a school having an ANB of more than forty (40), and employing a minimum of three (3) teachers, the maximum of three hundred twenty dollars (\$320.00) shall be decreased at the rate of sixty-five cents (\$0.65) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. Provided, however, that if only two (2) teachers are employed in a school with an ANB over forty (40) the maximum schedule shall be nine thousand seven hundred fifty dollars (\$9,750.00), plus fifty dollars (\$50.00) for each ANB over forty (40), not to exceed an ANB over fifty (50). For a school having an ANB of more than one hundred (100) pupils, the maximum of two hundred eightyone dollars (\$281.00) shall be decreased at the rate of twenty-nine cents (\$0.29) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum shall not exceed two hundred twenty-three dollars (\$223.00) for each pupil; provided that the maximum per pupil, for all pupils, ANB, shall figure on the basis of the amount allowed herein on account of the last eligible pupil, ANB, and provided further that all the schools operated within the incorporated limits of a city or town shall be treated as a school unit for the purpose of this schedule.

# High Schools

For a school having an average number belonging (ANB) of forty (40) or fewer pupils in a school, the guaranteed budget shall not exceed five hundred thirty dollars (\$530.00) for each pupil. High schools shall not receive state equalization aid unless they have been accredited by the state board of education, and if a high school having an ANB of twenty-

four (24) or less for three (3) consecutive years is not approved as an isolated high school, then it shall not receive state equalization aid.

For a secondary school having an ANB of more than forty (40) pupils, the maximum five hundred thirty dollars (\$530.00) shall be decreased at the rate of two dollars and sixty cents (\$2.60) for each additional pupil until the ANB shall have reached a total of one hundred (100) such pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of three hundred seventy-four dollars (\$374.00) shall be decreased at the rate of sixty-five cents (\$0.65) for each additional pupil until the number ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, a maximum of three hundred nine dollars (\$309.00) shall be decreased at the rate of ten cents (\$0.10) for each additional pupil until the total number, ANB, shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of two hundred ninety-nine dollars (\$299.00) shall be decreased at the rate of five cents (\$0.05) for each additional pupil until the total number, ANB, shall have reached nine hundred (900) pupils. Schools having an ANB in excess of nine hundred (900) pupils shall receive two hundred sixty-nine dollars (\$269.00) per pupil, provided that the maximum per pupil for all pupils, ANB, shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB.

In computing the amount guaranteed for the foundation program, only junior high schools which have been approved and accredited by the state board of education shall be considered a part of the secondary enrollment.

History: En. Sec. 3, Ch. 199, L. 1949; amd. Sec. 1, Ch. 244, L. 1953; amd. Sec. 1, Ch. 241, L. 1955; amd. Sec. 1, Ch. 251, L. 1957; amd. Sec. 1, Ch. 267, L. 1959; amd. Sec. 1, Ch. 230, L. 1961.

# Increased Foundation Program

Chapter 250, Laws 1961, provided for a 3% increase in the foundation program schedules for the period July 1, 1961 to July 1, 1963.

# Public School Classroom Unit Assistance Fund

Chapter 245, Laws 1961, provided for the establishment, administration, and distribution, during the period July 1, 1961 to July 1, 1963, of a public school classroom unit assistance fund. House Bill 470, Laws 1961, appropriated \$855,544 to this fund for each of the two fiscal years.

# Collateral References

Schools and School Districts 19(1). 78 C.J.S. Schools and School Districts 21.

75-3613. State common school equalization fund—change of name. The state common school equalization fund heretofore provided for is hereby renamed the "state public school equalization fund" and wherever the term "state common school equalization fund" or "state public school general fund" is now used in the laws of the state of Montana, the name shall be deemed to read, "state public school equalization fund." The treasurer of the state of Montana shall ever keep separate and apart from all other funds and moneys in his custody the funds of the said state public school equalization fund; and there shall be paid into said fund all money coming to the state for distribution and support of the public schools of the state, including the present allocation equal to twenty-five per cent (25%) of

all moneys received from the collection of income taxes under sections 84-4901 to 84-4935; and twenty-five per cent (25%) of all moneys received from the collection of corporation license taxes under sections 84-1501 to 84-1519, as provided in section 84-1901; one-half (½) of the funds received from the treasurer of the United States as the state's share of oil and gas royalties under the act of Congress of February 25, 1920; and all moneys which shall be appropriated to said state public school equalization fund by the legislative assembly of the state of Montana, and all moneys that may hereafter be appropriated by the Congress of the United States of America for public elementary and secondary schools; save and except such funds as are paid into the permanent school fund under the provisions of the constitution of the state of Montana and section 75-3701.

History: En. Sec. 5, Ch. 199, L. 1949.

NOTE.—The act of Congress of February 25, 1920, referred to in this section, is Sec. 35, Ch. 85, 41 U. S. Stat. at L. 450; United States Code, Tit. 30, Sec. 191.

#### Compiler's Notes

Sections 84-4916, 84-4918 and 84-4933 to 84-4935, contained in the reference referred to above, were repealed by sec. 15, Ch. 260, Laws 1955.

Sections 84-4923 and 84-4925, contained in the reference referred to above, were repealed by secs. 2 and 4, Ch. 212, Laws 1957.

## State Public School General Fund Abolished

Section 4 of Ch. 199, Laws 1949 read: "The state public school general fund, provided in section 1200.4, Revised Codes of Montana, 1935, as last amended by Chapter 165 [169], Session Laws of 1939 [75-3604], is hereby abolished, and said section repealed, as of midnight of the first day of December, 1949, and any funds remaining to the credit of said state public school general fund at the time of its abolishment shall be transferred to the credit of the state public school equalization fund, now known as the state common school equalization fund. All moneys in the state common school equalization fund shall, on December 1, 1949, be transferred to the state public school equalization fund."

#### Collateral References

Schools and School Districts 17. 78 C.J.S. Schools and School Districts 18.

75-3614. State board of education to administer state public school equalization fund. The state board of education is hereby declared to be the public school equalization board to administer and distribute said public school equalization fund in the manner and with the powers and duties provided in this act. Said board shall have the power to require such reports from the county superintendent of schools, county budget boards, county treasurers and school trustees as it may deem necessary, and shall provide rules and regulations for the purpose of carrying out the provisions of this act.

History: En. Sec. 6, Ch. 199, L. 1949. 78 C.J.S. Schools and School Districts Collateral References

Schools and School Districts 18.

75-3615. State superintendent of public instruction to compile data and make reports concerning state school equalization fund. The state superintendent of public instruction shall keep in his office full and complete data concerning accruals and credits to the state public school equalization fund and, in addition thereto, after July 1, 1949, the requirements of the various school districts of the state for aid from said funds to maintain the foundation financial program herein provided. The state superintendent of

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public instruction shall report to the state board of education at its meetings to be held in the months of July and December in each year the estimated amount which will be in the state public school equalization fund for the succeeding six months period, commencing January 1, and July 1. In any year when a session of the state legislative assembly convenes, the state superintendent of public instruction shall report to both branches of the assembly all figures and data available in his office concerning disbursements from said fund during the preceding two years, the amount then standing to the credit of said fund, and apportionment made of the moneys of said fund but not yet paid out, and the latest estimate of accruals to said fund.

History: En. Sec. 7, Ch. 199, L. 1949.

78 C.J.S. Schools and School Districts § 19.

Schools and School Districts 218.

75-3616. Distribution of funds—reports may be required. After July 1, 1949, the state board of education shall, in the months of December and April of each year, order disbursements from the state public school equalization fund within the limitations hereinafter specified and upon the basis of reports made to the state superintendent of public instruction, to any county treasurer who controls the fund of any school district or joint school district which, as established by its budget duly approved for the current school year, will not have sufficient funds to maintain the foundation financial program after receipt by it of its apportioned share from the permanent school fund of the state, from other constitutional sources, if any, from the district levy of five mills for the foundation program provided for by section 75-1723, the county levies provided for by this act, and from all other regular sources of revenue required to be used to finance the foundation program as provided in sections 75-1723 and 75-4516.1; provided, however, that the amount apportioned to any school district from said state public school equalization fund, when added to the amount apportioned to such school district from the permanent school fund, shall not exceed fifty per cent (50%) of the total foundation program of such district, computed at the rates and amounts set forth in section 75-3612.

Each order of the state board of education, acting as the public school equalization board, for disbursements of funds from the state public school equalization fund, shall be certified to the state auditor and state treasurer, whereupon the state auditor shall draw his warrants in accordance with such order and the state treasurer shall pay the same to the several county treasurers for credit to the school districts as provided in such order.

History: En. Sec. 8, Ch. 199, L. 1949; amd. Sec. 1, Ch. 60, L. 1961.

Collateral References
Schools and School Districts 19(1).

Schools and School Districts 19(1). 78 C.J.S. Schools and School Districts 21.

75-3617. Application for approval as isolated schools—circumstances to be considered in acting upon application. Before any elementary school having an ANB of eight (8) or less may be approved as an isolated school, and before any high school having an ANB of twenty-four (24) or less

may be approved as an isolated high school, the board of trustees of the district wherein said school is located shall, on or before the first day of May in each year, make written application to the budget board for such approval. Such application shall be acted upon on or before the fifteenth day of June, and such application shall be granted if said budget board shall find and determine that transportation of the pupils of such school to another school is impractical by reason of the existence of obstacles to travel, such as mountains, rivers, poor roads, distance of the pupils' homes from county roads or highways, or the distance of such isolated school from the nearest open school having room and facilities for the pupils of such isolated school; and an elementary school may also be approved as an isolated school upon a finding and determination by said budget board, approved by the county superintendent of schools and by the state superintendent of public instruction of the existence of conditions other than obstacles to travel which would result in unusual hardship to the pupils of such isolated school if they were transported to another school; and if none of the above mentioned circumstances exist, such application shall be denied.

History: En. Sec. 16, Ch. 199, L. 1949; amd. Sec. 2, Ch. 230, L. 1961.

- 75-3618. Distribution of money available to districts—formula for apportionment of county funds. After the deduction of transportation reimbursements provided by law, the proceeds of the county ten (10) mill common school levy and the proceeds of the county ten (10) mill special tax for high schools, shall each be separately distributed by the county superintendent to the respective districts in the county, and the county high school if there be one, in proportion to their needs under the foundation financial program. In all cases in which the proceeds of such county levy and the five (5) mill tax for elementary schools provided for in section 75-1723, when added to all other funds available to the respective districts from the permanent school fund, and other funds which must be used in support of the foundation financial program are insufficient to finance the foundation financial program, the proceeds of the county common school levy and the proceeds of the county special tax for high schools shall each be separately distributed in accordance with the following procedure; provided, however, that cash balances to the credit of the district at the end of the school year, after authorized reserves have been subtracted as well as outstanding warrants, shall be used by the district to reduce the levies on the district for the general fund after the uniform district levy and county and state equalization aid have been received:
- 1. Determine the ratio that the total funds available to all districts in the county in support of the foundation program (including proceeds of the county levy) bears to the total costs of the foundation program for all such districts.
- 2. Determine the ratio that the total funds available to each district in support of the foundation program (excluding all proceeds of the county levy) bears to the cost of the foundation program of each such district.

- 3. Districts in which the ratio as determined in (2) above exceeds the ratio in (1) above shall not be entitled to distribution of county funds but shall be excluded from further consideration under this section.
- 4. After elimination of districts referred to in (3) above, determine the ratio that the total funds available to all remaining districts in the county in support of the foundation program (including proceeds of the county levy) bears to the total cost of the foundation program of all such remaining districts. Each remaining district shall then be entitled to distribution of funds from the county levy, which, when added to all other funds available to such district in support of the foundation program shall be sufficient to finance such proportionate part of its foundation program.
- 5. No district school shall be deprived of its needful share of either county levy by reason of it being nonaccredited.
- 6. No territory situated within the county shall be excluded from the distribution of the school funds of the county solely because such territory lies within the boundaries of a joint district.

History: En. Sec. 17, Ch. 199, L. 1949; amd. Sec. 1, Ch. 182, L. 1951; amd. Sec. 1, Ch. 272, L. 1955; amd. Sec. 4, Ch. 151, L. 1961.

#### Cross-References

County levy, sec. 75-3706.

High school levy, sec. 75-4516.1. School district levy, sec. 75-1723.

#### Collateral References

Schools and School Districts 19(1). 78 C.J.S. Schools and School Districts 21.

- 75-3619. Formula for distribution of state funds. At any time when the total requirements of the several counties of the state for payment from the state public school equalization fund in support of the elementary school and high school foundation financial programs of the school districts within said counties shall exceed the funds available in said equalization fund, the funds on hand shall, subject to the limitation hereinafter specified, be apportioned and paid out to the several county treasurers in accordance with the following procedure:
- (1) Determine the ratio that the total funds available to all counties in the state in support of the foundation financial program (including the funds available in the equalization fund) bears to the total cost of the foundation financial program in all counties.
- (2) Determine the ratio that the total funds available to each county in support of the foundation financial program (excluding any payment from the equalization fund) bears to the cost of the foundation financial program of all school districts of the county.
- (3) Counties in which the ratio, as determined in (2) above, exceeds the ratio in (1) above, shall not be entitled to distribution of state equalization funds but shall be excluded from further consideration under this section.
- (4) After elimination of counties referred to in (3) above, determine the ratio that the total funds available to all remaining counties in support of the foundation financial program (including the total amount available from the equalization fund), bears to the total cost of the foundation financial program of all such remaining counties. Each remaining county shall then be entitled to distribution of funds from the equalization fund, which, when added to all other funds available to such county in support of

the foundation financial program, shall be sufficient to finance such proportionate part of the total foundation financial program of all school districts in the county; provided, however, that the amount apportioned to any school district from said state public school equalization fund, when added to the amount apportioned to such school district from the permanent school fund, shall not exceed fifty per cent (50%) of the total foundation program of such district.

The county superintendent of schools shall distribute the funds received by such county from the state public school equalization fund to the respective elementary districts and high schools in proportion to the needs of each respective elementary district and high school under the foundation financial program, such distribution to be made by applying to the receipts from the state public school equalization fund the formula provided in section 75-3618 for the distribution of the proceeds of county levies.

**History:** En. Sec. 18, Ch. 199, L. 1949. 78 C.J.S. Schools and School Districts § 21.

Collateral References

Schools and School Districts 19(1).

75-3620. State superintendent to give notice if state fund inadequate. On or before June 1, 1949, if the requirements of the several school districts of the state for aid from the state public school equalization fund shall exceed the moneys available to said fund, as soon as such facts shall have been ascertained, the state superintendent of public instruction shall certify to each county superintendent of schools the amount which will be available from said equalization fund for the school districts of his county, and the estimated deficiency of funds for state aid in support of these foundation financial programs and transportation budgets. The county superintendent, upon receipt of such certificate shall notify each school district clerk in his county of the information contained therein.

History: En. Sec. 19, Ch. 199, L. 1949.

75-3621. Resolution to issue warrants—hearing. After July 1, 1949, the boards of trustees of any school district which will have insufficient funds to meet its approved budget for operating expense; including transportation expense, because of a deficiency in the state public school equalization fund, may, by majority vote, adopt a resolution authorizing the issuance of warrants in excess of funds on hand for payment of budgeted expenses which shall not exceed, in the aggregate, the deficiency in payments from said state fund.

Such resolutions must be adopted at a regular or special meeting of the board, and notice of the time and place of such meeting and the text of the proposed resolution shall be given ten (10) days prior to the meeting by posting copies of such notice at three (3) public places in the district and by one (1) publication of such notice in a newspaper generally circulated in the district not less than ten (10) days prior to said meeting.

Any taxpayer on property within the district, and any parent or guardian of a school child residing in the district, may attend such meeting and be heard in support of or in opposition to such resolution. The deficiency of the state public school equalization fund, evidenced by the

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certificate of the state superintendent, as provided for in section 75-3620 shall be sufficient cause for adoption of the resolution.

History: En. Sec. 20, Ch. 199, L. 1949. 79 C.J.S. Schools and School Districts § 347.

Schools and School Districts \$\sim 95(2)\$.

75-3622. Authorization to issue warrants. Upon the adoption of the resolution in the manner provided, in section 75-3621, the board may issue warrants against, but not in excess of, any appropriation item contained in the budget, although the county treasurer does not have sufficient funds to pay such warrants. The power hereby conferred to issue warrants in excess of funds on hand is in addition to the power granted boards of school trustees to issue warrants in anticipation of tax collections as provided in section 75-1629.

History: En. Sec. 21, Ch. 199, L. 1949.

75-3623. Method of payment of warrants. When a school district has issued warrants in payment of budgeted expenses, pursuant to section 75-3621, none of said warrants shall be paid from the reserve fund of the district for the school year. The board of trustees of such district shall, prior to the second Monday in August, certify to the board of county commissioners the amount required to pay such outstanding warrants with interest thereon, and said board of county commissioners shall fix and levy a tax against all taxable property in such school district in such number of mills as will be required to pay such outstanding warrants with interest thereon; provided, however, that the amount of such warrants issued in payment of high school expenses shall be separately certified to the board of county commissioners, and said board of county commissioners shall fix and levy a separate tax for the payment thereof against all taxable property in the high school building district in which such high school is located, or, if such high school is not within a building district, such tax shall be imposed upon the district in which the high school is located, or upon all property within the county in the case of a county high school not within a building district.

When such tax is collected the county treasurer shall place the same in a special fund and use the same to pay such outstanding warrants with interest thereon. If, after all such warrants have been paid, any amount remains in such special fund, it shall be by such county treasurer transferred to the general fund of the school district, or, in the case of a county high school, to the general fund of such high school.

History: En. Sec. 22, Ch. 199, L. 1949.

79 C.J.S. Schools and School Districts § 350.

Schools and School Districts 95(4).

#### CHAPTER 37

FINANCE

Section 75-3701. Permanent school fund. 75-3702 to 75-3705. Repealed. 75-3706. Common school levy. 75-3707. Repealed.

75-3708. Repealed.

75-3709. Purposes for which money may be used.

Creation of special reserve fund for postwar maintenance, repair and 75-3710. equipment by school trustees, authorized.

Transfer of unexpended balance in district school fund to reserve fund. 75-3711.

75-3712. Expenditure of reserve fund moneys.

Conditions under which reserve fund moneys may be transferred to 75-3713. other funds.

75-3714. Duration of act.

75-3715. Repealed.

75-3716. Proceeds of town lots.

75-3717. 75-3718. Building and furnishing fund.

Warrants.

75-3719. Transfer of funds-election.

75-3720. Manner of apportionment and distribution.

75-3721. Repealed.

75-3722. 75-3723. Duties of county treasurer.

Same—report.

75-3724. County assessor to report valuations of school districts and cities and

75-3725. Duty of clerk of district court.

75-3726. Duty of justice of the peace.

75-3727. Penalty.

75-3728. Preamble-acknowledgment of state's obligation concerning permanent school fund.

75-3729 Assumption of farm mortgage loans—promise of state to repay moneys loaned and interest-transfer of lands to state public school permanent fund in lieu of interest due.

75-3729.1. Title to farm mortgage lands deemed to have vested in statetransfers validated.

75-3730 to 75-3733. Repealed.

75-3734. Separate veterans' training program account established.

75-3735. Funds received from federal government or state deposited in fundpayment of salaries.

75-3736. Surplus funds—transfer of funds in case of discontinuance of training program.

75-3737. Rules and regulations for on-farm training account.

75-3701. (1201) Permanent school fund. The principal of the state school fund shall remain irreducible and permanent. That said fund shall be derived from the following sources, to wit: Appropriations and donations by the state to this fund; donations and bequests by individuals to the state or common schools; the proceeds of land and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of timber, stone, materials, or other property from school lands other than those granted for specific purposes, and all moneys other than rental recovered from persons trespassing on said lands; five per centum of the proceeds of the sale of public lands lying within the state which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section 15 of the Enabling Act; the principal of all funds arising from the sale of lands and other property which have been and may be hereafter granted to the state for the support of common schools, and such other funds as may be provided by the legislative enactment.

History: Ap. p. Sec. 1940, Pol. C. 1895; 993, Rev. C. 1907; re-en. Sec. 2000, Ch. 76, amd. Sec. 11, p. 133, L. 1897; re-en. Sec. L. 1913; re-en. Sec. 1201, R. C. M. 1921.

NOTE.—The first act establishing a common school system and providing for school funds was chapter 1, pages 433-443, Bannack Stat. By chapter 13, page 17, 2nd session 1866, this act was annulled; the latter legislation being set aside by act of Congress of March 2, 1867.

#### References

School District No. 1 v. City of Helena, 87 M 300, 307, 287 P 164.

#### Collateral References

Schools and School Districts 17.
78 C.J.S. Schools and School Districts
18.
47 Am. Jur. 352, Schools, §§ 76 et seq.

75-3702 to 75-3705. (1201.1 to 1201.4) Repealed—Chapter 199, Laws of 1949.

#### Repeal

These sections (Secs. 1 to 4, Ch. 119, Laws 1927, Sec. 3 amended by Sec. 1, Ch. 132, Laws 1941; Sec. 1, Ch. 108, Laws 1943; Sec. 1, Ch. 129, Laws 1945; Sec. 1, Ch. 281, Laws 1947; Sec. 1, Ch. 54, Laws 1949), providing for the state common

school equalization fund and the distribution thereof, were repealed as Secs. 1201.1 to 1201.4, Revised Codes, 1935, by Sec. 23, Ch. 199, Laws 1949, effective December 1, 1949. For establishment of state public school equalization fund, see sec. 75-3613.

75-3706. (1202) Common school levy. In addition to the provisions for the support of the common schools, hereinbefore provided, it shall be the duty of the county commissioners of each county in the state to levy an annual tax of ten (10) mills on the dollar of the taxable value of all taxable property within the county, which levy shall be made at the time and in the manner provided by law for the levying of taxes for county purposes, which tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected; provided that if a levy of less than ten (10) mills should be sufficient to meet the total of the approved budgets of all school districts within the county, then such lesser levy shall be made, but no school district within a county levying less than ten (10) mills shall receive any apportionment from the state public school equalization fund.

For the further support of the common schools, there shall also be set apart by the county treasurer all moneys paid into the county treasury arising from all fines for violations of law, unless otherwise specified by law. Such moneys shall be forthwith paid into the county treasury by the officer receiving the same, and be added to the yearly school fund raised by taxation.

History: Ap. p. Sec. 44, p. 630, Cod. Stat. 1871; re-en. Sec. 43, p. 132, L. 1874; re-en. Sec. 1130, 5th Div. Rev. Stat. 1879; re-en. Sec. 1902, 5th Div. Comp. Stat. 1887; amd. Sec. 1940, Pol. C. 1895; amd. Sec. 1940a, p. 134, L. 1897; amd. Sec. 1, p. 12, L. 1901; amd. Sec. 1, Ch. 51, L. 1907; re-en. Sec. 994, Rev. C. 1907; amd. Sec. 2001, Ch. 76, L. 1913; amd. Sec. 31, Ch. 196, L. 1919; re-en. Sec. 1202, R. C. M. 1921; amd. Sec. 1, Ch. 123, L. 1929; amd. Sec. 1, Ch. 273, L. 1947; amd. Sec. 11, Ch. 199, L. 1949.

#### References

State ex rel. Knight v. Cave, 20 M 468, 472, 52 P 200; School District No. 1 v. City of Helena, 87 M 300, 307, 287 P 164.

#### Collateral References

Schools and School Districts = 18, 99. 78 C.J.S. Schools and School Districts § 19; 79 C.J.S. Schools and School Districts § 376.

### 75-3707. (1203) Repealed—Chapter 199, Laws of 1949.

Repeal

This section (Sec. 2, p. 13, L. 1901; Sec. 2, Ch. 51, L. 1907; Sec. 2002, Ch. 76, L. 1913; Sec. 32, Ch. 196, L. 1919; Sec. 1, Ch. 145, L. 1929; Sec. 1, Ch. 179, L. 1933; Sec. 1, Ch. 51, L. 1945), providing for a

special additional school tax, was repealed as Sec. 1203, Revised Codes, 1935, by Sec.

24, Ch. 199, Laws 1949, effective June 1, 1949.

#### 75-3708. (1204) Repealed—Chapter 199, Laws of 1949.

#### Repeal

This section (Sec. 49 (in part), p. 632, Cod. Stat. 1871; Sec. 1, p. 62, L. 1879; Sec. 1942, Pol. C. 1895; Sec. 1, Ch. 253, L. 1921; Sec. 1, Ch. 272, L. 1947), relating to the apportionment of funds by county superintendents, was repealed as Sec. 1204, Revised Codes, 1935, by Sec. 24, Ch. 199, Laws 1949, effective June 1, 1949.

75-3709. (1205) Purposes for which money may be used. County school moneys may be used by the county superintendent and trustees for the various purposes as authorized and provided in this act, and for no other purpose, except that in any district any surplus in the general school fund to the credit of said district, after providing for the expenses of not less than nine (9) months' school and a reserve fund of thirty-five per cent (35%) of the budget for the nine (9) months' term of the current year, may, on the vote of the qualified electors of said district, be used for the purpose of improving buildings and grounds, or erecting school buildings, a teacherage, or barn. If any school money shall be paid by authority of the board of trustees for any purpose not authorized by this chapter, the trustees consenting to such payment shall be liable to the district for the repayment of such sum, and a suit to recover the same may be brought by the county attorney, or if he shall refuse to bring the same, a suit may be brought by any taxpaying elector in the district.

History: Ap. p. Sec. 50, p. 633, Cod. Stat. 1871; re-en. Sec. 49, p. 136, L. 1874; re-en. Sec. 1136, 5th Div. Rev. Stat. 1879; re-en. Sec. 1908, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 56, L. 1893; amd. Sec. 1943, Pol. C. 1895; re-en. Sec. 997, Rev. C. 1907; amd. Sec. 2004, Ch. 76, L. 1913; amd. Sec. 33, Ch. 196, L. 1919; re-en. Sec. 1205, R. C. M. 1921; amd. Sec. 1, Ch. 28, L. 1947.

NOTE.—This section (before the 1947 amendment) held impliedly amended by Ch. 178, Laws 1933 (75-4501 to 75-4540) by denying the right to have remaining funds of high school general funds transferred by vote of electors to the building fund. Opinions of Attorney General, Vol. 16, No. 300.

#### Improvements

The improvements contemplated by this section must be of such a character as to materially and permanently enhance the value of the property, and therefore the trustees cannot authorize the payment of an assessment for sprinkling streets. City of Butte v. School District No. 1, 29 M 336, 340, 74 P 869.

## Injunction to Prevent Unlawful Payment

Since, under this section, a taxpayer may bring suit against school trustees for restitution of illegally expended funds of the district, thus providing a plain, speedy and adequate remedy, injunction does not lie to restrain the payment of an alleged illegal claim unless the trustees are insolvent, in which event the complaint must allege their insolvency. Peterson v. Fugle, 96 M 537, 541, 31 P 2d 1030.

#### Remedies of Taxpayer

This is a special statute enacted by the legislature for the express purpose of protecting a school district against the unlawful dissipation of its funds. It declares in no uncertain terms that the trustees who consent to such unlawful use of the school moneys shall be required personally to make restitution in an action at law which may be prosecuted by any taxpaying elector in the district if the county attorney refuses to bring the action. It is a legislative declaration that the remedy provided, is, prima facie, plain, speedy and adequate—a declaration which the courts must accept in the first instance. State ex rel. Stephens v. Zuck, 67 M 324, 327, 215 P 806.

#### References

Strange v. Esval, 67 M 301, 307, 215 P 807; Gregg v. Bayers, 73 M 165, 168, 235 P 337.

#### Collateral References

Schools and School Districts 19(1). 78 C.J.S. Schools and School Districts 21.

75-3710 SCHOOLS

Particular purposes within contemplation or use of funds by school district for of statute authorizing issuance of bonds specified purpose. 124 ALR 883.

75-3710. Creation of special reserve fund for postwar maintenance, repair and equipment by school trustees, authorized. For the purpose of accumulating and providing postwar funds for the maintenance and repair of buildings and maintenance, repair and replacement of equipment, which maintenance and repair of buildings and maintenance, repair and replacement of equipment as provided in this act shall be made on or after July 1, 1947, the board of trustees of each school district shall have the power, during the life of this act as hereinafter specified, to create a special reserve fund for the elementary school or schools of the district to be designated as the "elementary deferred maintenance fund of school district No. ....."; and if the district maintains a high school or high schools such board of trustees shall likewise have the power, during such time, to create a special reserve fund for such purposes for such high school or schools to be designated as the "high school deferred maintenance fund tees of any county high school shall likewise have the power, during such time, to create a special reserve fund for such county high school to be designated as the "county high school deferred maintenance fund."

History: En. Sec. 1, Ch. 131, L. 1945; amd. Sec. 1, Ch. 161, L. 1947.

75-3711. Transfer of unexpended balance in district school fund to reserve fund. Whenever, during the life of this act it is found immediately after the close of any school year, that there is any unexpended and unappropriated balance, over and above the reserve appropriated for the then current fiscal year, standing to the credit of the elementary general school fund, or district high school fund or the county high school fund, as the case may be, on the books of the county treasurer, such board of trustees may, in its discretion, transfer the same, or any part thereof, to the proper reserve fund which has been created by such board of trustees in accordance with the provisions of section 75-3710, provided that no moneys standing to the credit of any elementary school fund shall be transferred to any such high school reserve fund and no moneys standing to the credit of any high school fund shall be transferred to any such elementary reserve fund. Every such transfer shall be made by resolution adopted by the board of trustees and a copy thereof shall be transmitted to the county treasurer and such treasurer shall thereupon make the proper entries in his accounts showing such transfer.

History: En. Sec. 2, Ch. 131, L. 1945.

75-3712. Expenditure of reserve fund moneys. None of the moneys transferred to any such reserve fund shall be expended for any purpose before July 1, 1947. Beginning with July 1, 1947, the moneys in such reserve funds may be expended for the maintenance and repair of school buildings and for the maintenance, repair and replacement of school equipment, but for no other purpose, and the budget for any district or high school for each year, when any expenditures are to be made from any

such reserve fund, shall set out in such budget, as near as may be possible the items or purposes for which such expenditures are to be made and the amounts appropriated to meet such expenditures.

History: En. Sec. 3, Ch. 131, L. 1945; amd. Sec. 2, Ch. 161, L. 1947.

75-3713. Conditions under which reserve fund moneys may be transferred to other funds. None of the moneys in any such reserve fund may at any time be transferred to any other fund or funds; provided, however, that if the amount or any part thereof appropriated for any item or purpose in any reserve fund budget shall not be required therefor the amount not so required may be transferred to any other item or purpose for which an appropriation has been made in such reserve fund budget; and provided further that immediately following the date when this act shall cease to be of any force or effect, if there shall remain in any such reserve fund any amount unexpended and unappropriated such amount may, by order of the board of trustees, be transferred to the general elementary school fund, if such amount be in the elementary reserve fund, or to the district high school fund if such amount be in the high school reserve fund, or to the county high school fund, if such amount be in the county high school reserve fund, and written notice shall be given the county treasurer of such transfer.

History: En. Sec. 4, Ch. 131, L. 1945.

75-3714. Duration of act. This act shall be in full force and effect from and after its passage and approval and shall remain in effect for a period of three (3) years after July 1, 1947, but no longer.

History: En. Sec. 5, Ch. 131, L. 1945; amd. Sec. 3, Ch. 161, L. 1947.

75-3715. (1206) Repealed—Chapter 50, Laws of 1947.

75-3716. (1207) Proceeds of town lots. All moneys arising from the sale of town lots under and by virtue of the several acts of the legislative assembly of the state of Montana relating to townsites, that are now or that hereafter may come into the hands of any clerk of the district court, or the corporate authorities of any city or town of the state, shall be paid into the county treasury of the county for the use and benefit of the common schools of the school district in which such city or town is situated, to be used as provided for in this chapter.

History: En. Sec. 1944, 5th Div. Comp. Stat. 1887; re-en. Sec. 1945, Pol. C. 1895; re-en. Sec. 999, Rev. C. 1907; re-en. Sec. 2006, Ch. 76, L. 1913; re-en. Sec. 1207, R. C. M. 1921.

Collateral References

Schools and School Districts 17. 78 C.J.S. Schools and School Districts 18.

75-3717. (1208) Building and furnishing fund. The county treasurers of the several counties of this state shall transfer all moneys so paid into said treasury as provided for in the preceding section or that may now be in such treasury, derived from said source, to the school fund of the school district in which said town is situated, which shall be paid out on the order of the school trustees of such district as provided for in section

75-3718 SCHOOLS

75-3718; and which said moneys shall be by said treasurer set apart as a special fund for the purpose of building and furnishing schoolhouses, and shall be used for such purpose alone, unless otherwise ordered, as provided for in this chapter.

History: En. Sec. 1945, 5th Div. Comp. Stat. 1887; re-en. Sec. 1946, Pol. C. 1895; re-en. Sec. 1000, Rev. C. 1907; amd. Sec. 2007, Ch. 76, L. 1913; re-en. Sec. 1208, R. C. M. 1921.

#### Collateral References

Schools and School Districts 19(1). 78 C.J.S. Schools and School Districts 21.

75-3718. (1209) Warrants. The school trustees of any school district are hereby authorized to draw warrants on said fund named in the two preceding sections, for the purpose of building and furnishing a schoolhouse in such place, in the town or city from the sale of lots out of which such fund arose, as they may designate, which said warrants or orders shall specify the fund on which the same are drawn, and for what purpose drawn.

History: En. Sec. 1946, 5th Div. Comp. Stat. 1887; re-en. Sec. 1947, Pol. C. 1895; re-en. Sec. 1001, Rev. C. 1907; re-en. Sec. 2008, Ch. 76, L. 1913; re-en. Sec. 1209, R. C. M. 1921.

#### Collateral References

Schools and School Districts \$\infty\$ 95(1).

79 C.J.S. Schools and School Districts 346.

75-3719. (1210) Transfer of funds—election. Said fund may be used for general school purposes, if a majority of the qualified electors of such district shall so elect, upon such question being duly submitted to them at any regular or special election therefor.

History: Ap. p. Sec. 1947, 5th Div. Sec. 2009, Ch. 76, L. 1913; re-en. Sec. 1210, Comp. Stat. 1887; re-en. Sec. 1948, Pol. C. R. C. M. 1921. 1895; re-en. Sec. 1002, Rev. C. 1907; amd.

(1211) Manner of apportionment and distribution. sums of money derived from any and all bonuses, royalties, and rentals paid into the treasury of the United States on account of any permits or leases granted by the government of the United States as provided by the act of Congress of February 25, 1920, and paid by the secretary of the treasury of the United States to the state of Montana, shall, within thirty days after being received by the state of Montana, be apportioned and distributed by the state treasurer as follows: One-half thereof shall be deposited to the credit of the state highway fund, and the other one-half thereof shall be apportioned between and distributed and paid over to the several counties of the state in proportion to the total number of teaching positions, in which teachers were employed for a period of at least four months, in each county during the school year ending June 30th immediately preceding, as shown by the statements and certificates of the county superintendents of schools filed with the state treasurer for such school year, and such state treasurer must, at the time of making such apportionment and distribution notify the county superintendent of schools of each of the several counties of the amount so apportioned and distributed to each county. Within ten days after receiving such notice from the state treasurer each county superintendent of schools must apportion the amount received and paid over to his county by the state treasurer in the following manner, to wit: (a) Sixty per centum (60%) thereof shall be apportioned between

and among the several school districts, district high schools and county high schools in proportion to the total number of teaching positions, in which teachers were employed for at least four months during the last preceding school year for which a statement and certificate was filed with the state treasurer by the county superintendent of schools in each such school district, district high and county high school; (b) thirty-five per centum (35%) thereof shall be apportioned between and among the several school districts, district high and county high schools in proportion to the aggregate number of days attendance of all eligible pupils who attended for a period of not less than six weeks during the aforesaid school year in each district school, district high and county high school; (c) five per centum (5%) thereof shall be apportioned between and among the district high schools and county high schools in proportion to the number of years of accredited high school work during the aforesaid school year in each such district high and county high school.

(2) Immediately after making such apportionment the county superintendent of schools must make and file with the county treasurer a statement and certificate showing the total amount apportioned to each school district, district high and county high school, and the county treasurer must, on receiving such statement and certificate, immediately credit the general fund of each school district, district high and county high school with the amount to which each is entitled as shown by such statement and certificate, and such amounts shall be expended for the same purpose for which other moneys deposited to the credit of such funds may be expended, and for no other purpose.

History: En. Sec. 1, Ch. 12, Ex. L. 1921; re-en. Sec. 1211, R. C. M. 1921; amd. Sec. 1, Ch. 104, L. 1923.

NOTE.—The operation of this section was apparently affected by section 75-3702 (Sec. 1, Ch. 119, Laws 1927) which provided that the moneys received under this section were to be credited to the state common school equalization fund. This section was then repealed by Sec. 23, Ch. 199, Laws 1949. Section 5 of Ch. 199, Laws 1949 (75-3613) provided that the name "state common school equalization fund"

be changed to "state public school equalization fund."

#### Collateral References

Highways 991/4; Schools and School Districts 19(1).

40 C.J.S. Highways §§ 176, 178; 78 C.J.S. Schools and School Districts § 21.

Determination of school attendance, enrollment, or pupil population for purpose of apportionment of funds. 80 ALR 2d 953.

#### 75-3721. (1212) Repealed—Chapter 75, Laws of 1961.

#### Repeal

This section (Sec. 2, Ch. 12, Ex. L. 1921; Sec. 1, Ch. 104, L. 1923) relating to a statement of teachers positions made by

the county superintendent of schools to the state treasurer, was repealed by Sec. 1, Ch. 75, Laws 1961.

75-3722. (1213) Duties of county treasurer. It shall be the duty of the county treasurer of each county:

1. To receive and hold all school moneys and to keep a separate account of their disbursements to the several school districts which shall be entitled to receive them according to the apportionment of the county superintendent. A separate account shall be maintained for each fund supported by a county-wide levy for a specific, authorized purpose, including (1) the county ten-mill levy for elementary schools, (2) the county

ten-mill levy for high schools, (3) the county levy for high school transportation as provided in section 75-3414, and (4) the county levy for the high school retirement systems as provided in sections 68-603 and 75-2709.

- 2. To render quarterly, beginning September first, to each board of trustees, through its chairman, an itemized statement of warrants paid and moneys received for the district for the preceding quarter.
- 3. To notify the county superintendent of public schools of the amount of county school funds in the county treasury subject to apportionment whenever required, and to inform said county superintendent of the amount of school moneys belonging to any other fund subject to apportionment.
- 4. To pay all warrants drawn on county or district school moneys in accordance with the provisions of this chapter, whenever such warrants are countersigned by the district clerk and also countersigned by the county superintendent as provided in section 75-1640.
- 5. To keep in a separate fund the proceeds of any levy made to cover expenses of schools for any part of the succeeding school year and no warrants shall be paid out of said funds for the preceding school year either before or after the fund is transferred. At the beginning of the school year for which the fund is raised it shall be transferred to the general fund of the district.
- 6. To receive all interests and penalties on all delinquent school taxes and credit the same to the fund and district for which the original taxes were levied.
- 7. To keep for each school district, separately for elementary and high schools, and for each county high school, a separate, detailed account of the receipts, disbursements and cash balances for each of the several regular funds of the school budget for which a tax levy is ordinarily made.
- 8. To keep for each school district, separately for elementary and high schools, and for each county high school, a separate, detailed account of the receipts, disbursements and cash balances for each special, non-budgeted fund supported by nontax revenues, including (a) the self-supporting school lunch fund, (b) miscellaneous federal funds for special purposes including vocational education and the National Defense Education Act, (c) the building fund, (d) the adult education fund when nontax supported, (e) the self-supporting housing and dormitory fund and (f) any other special fund required by the trustees.

History: Ap. p. Sec. 1880, Pol. C. 1895; re-en. Sec. 941, Rev. C. 1907; amd. Sec. 2010, Ch. 76, L. 1913; re-en. Sec. 1213, R. C. M. 1921; amd. Sec. 1, Ch. 144, L. 1929; amd. Sec. 1, Ch. 62, L. 1961.

#### Special Deposit

The effect of the provision of this section, requiring the county treasurer to keep school moneys as a "special deposit" is not to make the county a bailee thereof in the sense of a deposit for their safe-keeping, they to be returned to the school

district when called for, but is to constitute the deposit a general one which, however, must be kept in a special account for school purposes. Construction before amendment by Ch. 144, Laws 1929, in State v. McGraw, 74 M 152, 154, 240 P 812.

#### Collateral References

Schools and School Districts ← 18.
78 C.J.S. Schools and School Districts § 19 et seq.

75-3723. (1214) Same—report. To make annually, on or before the tenth day of July in each year, a financial report of the last school year

and fiscal year ending June thirtieth, to the county superintendent of schools, in such form as is prescribed by section 75-1710 for elementary schools and section 75-4515 for high schools.

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History: En. Sec. 2010, Ch. 76, L. 1913; 1214, R. C. M. 1921; amd. Sec. 2, Ch. 62, amd. Sec. 6, Ch. 81, L. 1917; re-en. Sec. L. 1961.

75-3724. (1215) County assessor to report valuations of school districts and cities and towns. The county assessor of each county in the state must, at the time of delivering the completed assessment book to the county clerk of his county, as required by section 84-505, also deliver to such county clerk and to the county superintendent of schools and city and town clerks a statement showing separately, for each school district and each city and town in his county, the total full and true value and the taxable value of all property in such districts and cities and towns, as the same appears in such completed assessment book.

The county clerk must, after the second Monday in August and before or at the time of delivering the assessment book to the assessor, as required by section 84-4006, make out a statement showing separately for each school district, and for each city and town in the county, the total full and true value and the taxable value of all property in such districts, eities and towns, as the same appears on the assessment book after amendments, corrections and additions thereto have been made by the state and county boards of equalization and entered on such assessment book; and must immediately deliver to the county superintendent of schools a copy of so much thereof as shows such valuations for school districts and transmit to each city and town clerk a copy of so much thereof as affects such cities and towns.

In the case of a joint school district the county assessor and the county clerk must, at the time of making each of such statements, transmit copies of so much thereof as affects such joint school district to the county superintendent of schools and to the board of county commissioners of each county in which any part of the joint district may be situated.

History: En. Sec. 2011, Ch. 76, L. 1913; amd. Sec. 1, Ch. 46, L. 1921; re-en. Sec. 1215, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1923; amd. Sec. 1, Ch. 62, L. 1925; amd. Sec. 1, Ch. 50, L. 1945.

#### Collateral References

Schools and School Districts \$\infty 103(1)\$. 79 C.J.S. Schools and School Districts \$383.

75-3725. (1216) Duty of clerk of district court. It shall be the duty of the clerk of the district court, at the close of every term thereof, to report to the county superintendent of the county in which said term shall have been held, whether or not any fines, and if any, what ones, were imposed by said court during the said term.

History: En. Sec. 1903, 5th Div. Comp. Stat. 1887; re-en. Sec. 1891, Pol. C. 1895; re-en. Sec. 943, Rev. C. 1907; re-en. Sec. 2012, Ch. 76, L. 1913; re-en. Sec. 1216, R. C. M. 1921.

Collateral References Fines©20 36A C.J.S. Fines § 19.

75-3726. (1217) Duty of justice of the peace. It shall be the duty of each justice of the peace of each county to report to the county superintendent, during the month of September in each year, whether or not they

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have imposed and collected any fines during the preceding year, and if any, what ones, with the date at which the same were paid to the county treasurer.

History: En. Sec. 1903, 5th Div. Comp. 2013, Ch. 76, L. 1913; re-en. Sec. 1217, Stat. 1887; re-en. Sec. 1892, Pol. C. 1895; R. C. M. 1921. re-en. Sec. 944, Rev. C. 1907; re-en. Sec.

75-3727. (1218) **Penalty.** All officers mentioned in the four preceding sections, who shall fail or neglect to perform any of the duties required by this chapter, shall be deemed guilty of a misdemeanor, and upon conviction before any court having competent jurisdiction thereof, shall be fined in any sum not less than twenty dollars and not more than one hundred dollars for each neglect; and such fine shall be paid into the county treasury for the benefit of the public schools in said county.

History: En. Sec. 1903, 5th Div. Comp. Stat. 1887; re-en. Sec. 1893, Pol. C. 1895; re-en. Sec. 945, Rev. C. 1907; re-en. Sec. 2014, Ch. 76, L. 1913; re-en. Sec. 1218, R. C. M. 1921.

#### Collateral References

Clerks of Courts ₹75; Counties ₹102; Justices of Peace ₹30.

14 C.J.S. Clerks of Courts §§ 66-77; 20 C.J.S. Counties § 146; 51 C.J.S. Justices of the Peace § 23.

75-3728. (1218.1) Preamble—acknowledgment of state's obligation concerning permanent school fund. Whereas, the fifteenth legislative assembly of the state of Montana duly enacted a law embodied in chapter 124 of the session laws of the said assembly, approved by the governor on March 7, 1917, which law among other things makes it the duty of the state board of land commissioners to make investments from the public school permanent fund in first mortgages on good improved farm lands in the state of Montana; whereas, under the provisions of this law and acts amendatory thereof, and supplementary thereto, the state board of land commissioners invested funds belonging to the said public school permanent fund in farm mortgage loans during the years 1917, 1918, 1920, 1921, 1922 and 1924 in the total sum of four million six hundred forty-eight thousand seven hundred fifty dollars (\$4,648,750.00);

Whereas, the state board of land commissioners has found it necessary to pay taxes on the lands given as security for such loans and to pay other expenses in connection with these loans in an aggregate amount exceeding six hundred thousand dollars (\$600,000.00) in order to protect the state against loss of such lands through tax deeds; whereas, all of the original farm mortgage loans now unpaid have become delinquent by reason of the failure of the mortgagors to pay principal and interest thereon as the same became due; and whereas, the state board of land commissioners has found it necessary to secure title to more than eighty-five per cent (85%) of all the lands given as security for such loans through foreclosure or quitclaim deeds; whereas, on the first day of January, 1935, the total unpaid principal invested in such farm mortgage loans including unrepaid taxes and other costs paid from the public school funds, exclusive of all unpaid accrued interest, amounted to the total sum of four million two hundred fifty thousand six hundred twenty-five and 95/100 dollars (\$4,250,625.95).

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Whereas, the said chapter 124 of the 1917 session laws, as amended, authorizing the investment of money from the public school permanent fund and from other trust funds of the state in farm mortgage loans, has been repealed by chapter 139 of the 1933 session laws;

And whereas, under the provisions of section 3 of article XI of the constitution of this state "such public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion, to be invested, so far as possible, in public securities within the state, including school district bonds";

Now therefore, be it enacted by the legislative assembly of the state of Montana that the state hereby recognizes its liability for such public school fund under the said section 3 of article XI of the constitution; that it acknowledges its obligation thereunder forever to keep such public school fund inviolate and also its guarantee against the loss or diversion of any part of the said fund, including the aforesaid sum of four million two hundred fifty thousand six hundred twenty-five and 95/100 dollars (\$4,250,625.95) as of January 1, 1935.

History: En. Sec. 1, Ch. 127, L. 1935.

#### Purpose

Aware of its solemn trust, the legislature enacted this legislation specifically recognizing the liability of the state and acknowledging its obligation to keep inviolate the public permanent school fund, and its guaranty to protect it against loss or diversion, including loss from in-

vestments in state farm loans (Art. XI, sec. 3, Const.). Toole County Irrigation District v. State, 104 M 420, 437, 67 P 2d 989.

#### Collateral References

Schools and School Districts € 18. 78 C.J.S. Schools and School Districts § 20 et seq.

75-3729. (1218.2) Assumption of farm mortgage loans—promise of state to repay moneys loaned and interest—transfer of lands to state public school permanent fund in lieu of interest due. The state itself hereby assumes and takes over all of such farm mortgage loans now existing as such, all the lands taken over by the state under such mortgages through foreclosure proceedings and otherwise, together with all the tenements, hereditaments, and appurtenances thereunder belonging; all sale or resale contracts of certificates embracing such lands, and all rights, claims and demands whatsoever accruing to the state under and in connection with such farm mortgage loans; and the state hereby promises and agrees to repay to the public school permanent school fund the said sum of four million two hundred fifty thousand six hundred twenty-five and 95/100 dollars (\$4,250,625.95) as of January 1, 1935, together with interest on the balance remaining from time to time unpaid at the rate of two per centum (2%) per annum, from the proceeds of such farm mortgage loans and lands and from such other sources other than that [of] the state general fund as the legislative assembly may provide.

The state of Montana further promises and agrees to repay to the public school permanent fund all the interest payments lost to said public school permanent fund by reason of failure of payment of farm mortgage loans during the whole, or any part, of the period since such farm mortgage loans were executed.

In lieu of the repayment of this interest, and as complete fulfillment of all claims upon the state of Montana by the state public school permanent fund as a result of the obligations incurred through chapter 124, Laws of 1917, the state of Montana hereby transfers to the state public school permanent fund all farm mortgage loans now existing as such, all the lands taken over by the state under such mortgages through foreclosure proceedings and otherwise, together with all tenements, hereditaments and appurtenances thereto belonging; all sale or resale contracts or certificates embracing such lands, and all rights, claims and demands whatsoever accruing to the state under and in connection with such farm mortgage loans, as listed in section 75-3729. The administration of these lands shall remain as outlined in sections 75-3730, 75-3731, 75-3732 and 75-3733, and the income from these lands shall be allocated in the same manner as the income from all other lands belonging to the state public school permanent fund.

History: En. Sec. 2, Ch. 127, L. 1935; amd. Sec. 1, Ch. 191, L. 1949; amd. Sec. 1, Ch. 250, L. 1953.

NOTE.—Chapter 124, Laws of 1917, referred to above, was repealed by Ch. 139, Laws 1933 and Ch. 60, Laws 1927; however, Sees. 10 and 12 of Ch. 124, Laws 1917 were retained in the code as sections 81-1901 and 81-1902 so that mortgages which were written under the provisions of said chapter could still be satisfied. Subsequently, said sections 81-1901 and 81-1902, as

well as sections 75-3730 to 75-3733, referred to in the last sentence above, were repealed by Ch. 184, Laws 1961.

#### Compiler's Note

The bracketed word "of" was inserted by the compiler.

#### References

Toole County Irrigation District v. State, 104 M 420, 437, 67 P 2d 989.

75-3729.1. Title to farm mortgage lands deemed to have vested in state—transfers validated. The transfer of farm mortgage lands made by chapter 250, Laws of 1953 [75-3729] shall be deemed to have vested title in said lands in the state of Montana in trust for the state public school permanent fund.

All contracts, certificates of purchase, deeds and conveyances executed by the state of Montana in the administration of said lands since the effective date of chapter 250, Laws of 1953, shall be deemed sufficient in law to dispose of the right, title and interest therein described by the state of Montana.

History: En. Sec. 1, Ch. 221, L. 1961.

75-3730 to 75-3733. (1218.3 to 1218.6) Repealed—Chapter 184, Laws of 1961.

#### Repeal

These sections (Secs. 3 to 6, Ch. 127, L. 1935; Sec. 2, Ch. 191, L. 1949), relating

to administration of mortgages and the farm loan sinking fund, were repealed by Sec. 8, Ch. 184, Laws 1961.

75-3734. Separate veterans' training program account established. The board of trustees of any school district or of any county high school is hereby authorized to set up a separate account with the county treasurer for the purpose of receiving and disbursing funds received from the United States government or the state of Montana for the operation of training programs for veterans under public laws of the United States Congress. Such account shall be separate and apart from other budgets and accounts

of the school district, and shall be labeled "On-Farm Training Account" and shall be under the jurisdiction of the board of trustees.

History: En. Sec. 1, Ch. 76, L. 1951.

75-3735. Funds received from federal government or state deposited in fund—payment of salaries. The board of trustees of each such school district or county high school having the on-farm training account established in section 75-3734, shall deposit all receipts from the state of Montana or the United States government for the on-farm training program in this fund. Payment of authorized salaries from this account shall be made by the board once each month; providing, however, that should there be insufficient funds to the credit of such account, the county treasurer shall register the warrant as provided for pursuant to section 16-2604.

History: En. Sec. 2. Ch. 76, L. 1951.

Surplus funds—transfer of funds in case of discontinuance of training program. Any funds accruing to this account over and above the amount needed for facility charges, regular salaries and instruction expense will remain in the on-farm training account as an unexpended balance; provided that should the on-farm training program be discontinued for any reason, any unexpended balance will be transferred to the general fund.

History: En. Sec. 3, Ch. 76, L. 1951.

75-3737. Rules and regulations for on-farm training account. Rules and regulations for the establishment of this account and for its operation shall be formulated by the state examiner.

History: En. Sec. 4, Ch. 76, L. 1951.

#### CHAPTER 38

#### EXTRA TAXATION FOR SCHOOL PURPOSES

Section 75-3801. District school taxes—election. Notice of election.

75-3802.

75-3803. Purposes of levy to be submitted—use of funds. 75-3804. Form and marking of ballot-conduct of election. 75-3805. Challenging voters—oath of elector—false swearing.

75-3801. (1219) District school taxes—election. (1) Whenever the board of trustees of any school district shall deem it necessary to raise money by taxation in excess of the levy required to meet its foundation program and approved additions thereto within the limitations of thirty per cent (30%) hereinbefore specified, for the purpose of maintaining the schools of said district, or building, altering, repairing or enlarging any schoolhouse or houses of such district, for furnishing additional school facilities for said district, or for any other purpose necessary for the proper operation and maintenance of the schools of said district, said board of trustees shall determine and fix the amount necessary and required for such purpose or purposes in addition to the five (5) mill levy and the approved addition to its foundation program hereinbefore provided for, and it shall submit the question of an additional levy to raise said excess amount to the

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qualified electors residing within the district who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes, either at the regular annual election held in said district, or at a special election called for that purpose by the board of trustees of said district. Such election shall be called by resolution in the same manner as provided for other school elections, and shall be held prior to August first.

Whenever the board of trustees of any district or county high school shall deem it necessary to raise money by taxation in excess of the levy required to meet its foundation program and approved additions thereto within the limitation hereinbefore specified for the purpose of maintaining the high schools of said district or the county high school, or building, altering, repairing or enlarging any schoolhouse or houses of such district or county high school, for furnishing additional school facilities for said district, or county high school, or for any other purpose necessary for the proper operation and maintenance of the schools of said district, or county high school, said board of trustees shall determine and fix the amount necessary and required for such purpose or purposes in addition to any other legal levies on the district, including the approved addition to its foundation program hereinbefore provided for, and in the case of the district high school it shall submit the question of an additional levy to raise said amount to the qualified electors residing within the district who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes, either at the regular annual election held in said district or at a special election called for that purpose by the board of trustees of said district. In the case of the county high school the board shall submit the question of an additional levy to raise said amount to the qualified electors residing within the county, exclusive of those residing within any district maintaining a district high school in the county, who are taxpayers and whose names appear upon the last completed assessment roll of the county for state, county and school taxes, either at the regular annual elections held in said districts, or special elections called for that purpose by the board of trustees of said county high school. Such election shall be called by resolution in the same manner as provided for other school elections, and shall be held prior to August first; and provided, further, that the provisions of this act shall not prevent the voting of a special levy on a high school district as provided for in chapter 130, Laws of 1949 (75-4609).

History: En. Sec. 1, Ch. 93, L. 1917; re-en. Sec. 1219, R. C. M. 1921; amd. Sec. 1, Ch. 120, L. 1925; amd. Sec. 1, Ch. 144, L. 1935; amd. Sec. 12, Ch. 199, L. 1949; amd. Sec. 1, Ch. 210, L. 1951; amd. Sec. 2, Ch. 247, L. 1953.

NOTE.—The words "hereinbefore specified" probably refer to sec. 75-1713.1.

#### Cross-Reference

Crippled children, levy for instruction, sec. 75-1406.

#### Electors

The fact that some electors pay taxes only on personal property does not disqualify them from voting at the election, for the names of such electors appear on the assessment roll the same as do those of the electors who pay taxes on real estate. Habel v. High School District "C" of Cascade County, 129 M 588, 292 P 2d 349, 351.

#### Notice of Election

Under the rule that failure to give the statutory notice of an election is immate-

rial where actual notice was given and the electors participated generally in the election, where it appeared that the clerk of the district had mailed circular letters to the taxpaying freeholders of the district stating the time and place of holding the election; that the only newspaper in the district published a news item with relation thereto; that handbills referring to the election were distributed throughout the district; that the election was discussed generally by the people residing in the district, and that a larger number of votes was cast than at any previous election, failure to give the statutory notice by

giving only nine days' instead of ten days' notice did not render the election void, and did not justify an injunction against collection of the tax, particularly where no proof was offered that any elector was deprived of the right to vote by reason of insufficient notice. Buckhouse v. Joint School District No. 28, 85 M 141, 143, 146, 277 P 961.

#### Collateral References

Schools and School Districts 103(2), 108(1).

79 C.J.S. Schools and School Districts §§ 380, 383, 408.

75-3802. (1220) Notice of election. Where the question of making such additional levy is so submitted, notice thereof shall be given by posting the same at each schoolhouse in said district, at least ten days before such election, or by publication thereof for a like period before such election in each newspaper published in said district, or by both such notice and publication.

History: En. Sec. 2, Ch. 93, L. 1917; re-en. Sec. 1220, R. C. M. 1921.

#### References

Buckhouse v. Joint School District No. 28, 85 M 141, 143, 277 P 961.

75-3803. (1221) Purposes of levy to be submitted—use of funds. In submitting such question there shall be specified the amount to be raised by such additional tax levy and the approximate number of mills required to raise such amount and the purpose for which the same is to be expended and if authorized the money raised by such additional tax levy shall be used for that specified purpose only; provided, that if any balance remains on hand after the purpose for which said levy was made has been accomplished, said balance may, by the vote of the trustees of said district, be transferred to any other fund of such district.

History: En. Sec. 3, Ch. 93, L. 1917; re-en. Sec. 1221, R. C. M. 1921; amd. Sec. 2, Ch. 144, L. 1935.

75-3804. (1222) Form and marking of ballot—conduct of election. The ballot furnished electors at said election shall have printed thereon the following: "Shall a levy be made in addition to the levies authorized by law in such number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy) for the purpose of (insert the purpose for which the additional tax levy is made)?"

- ☐ For an additional levy to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills.
- Against an additional tax levy to raise the sum of (state amount to be raised by additional tax levy), and being approximately (give number) mills.

The voters shall mark the ballots in the same manner as ballots are marked under the election laws of this state. The election shall be held, votes canvassed and returns made as in other school elections. If the

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majority voting on the question are in favor of such additional levy, the board of trustees of said school district shall so certify to the board of county commissioners of the county in which said school district is situated the amount authorized by such election to be raised by such additional levy and such board of county commissioners shall make such additional levy in such number of mills as will raise such amount in the same manner that the levy for special taxes in said district is made.

History: En. Sec. 4, Ch. 93, L. 1917; re-en. Sec. 1222, R. C. M. 1921; amd. Sec. 3, Ch. 144, L. 1935; amd. Sec. 1, Ch. 281, L. 1959.

References

Buckhouse v. Joint School District No. 28, 85 M 141, 145, 277 P 961.

75-3805. (1223) Challenging voters—oath of elector—false swearing. Any person offering to vote may be challenged by any elector of the district, and the judges must thereupon administer to the person challenged an oath or affirmation, in substance as follows:

"You do solemnly swear (or affirm) that you are a citizen of the United States; that you are twenty-one years of age; that you have resided in this State one year and in this school district thirty days next preceding this election; that you are a taxpayer on the last assessment roll from this school district; and that you have not voted this day. So help you God."

Said oath shall be reduced to writing and signed by the person challenged and sworn to before one of the judges of election. Said oath or affirmation shall be returned with the ballots cast at such election. If the voter takes oath or affirmation, his vote must be received; otherwise, it will be rejected. Any person who shall swear falsely before any such judge of election shall be guilty of perjury, and shall be punished accordingly.

History: En. Sec. 5, Ch. 93, L. 1917; 2, Ch. 120, L. 1925; amd. Sec. 1, Ch. 31, re-en. Sec. 1223, R. C. M. 1921; amd. Sec. L. 1941.

#### CHAPTER 39

#### BONDS

Section 75-3901. Boards of trustees of school districts may issue coupon bonds for certain purposes.

75-3902. Limitations on amount of issue.

75-3903. What forms of bonds may be issued.

75-3904. Limitation of term of bonds-interest-redemption.

75-3905. Dates of issue and payments.

Certain bonds may be issued without holding an election. 75-3906.

75-3907. Exchange of other forms of bonds for amortization bonds. 75-3908. Petition and election required for bond issues for other purposes.

75-3909.

Form, contents and proof of petition.

Meeting of board of trustees to consider petition and calling of elec-75-3910. tion-notice of election-form.

75-3911. Preparation of ballots-form.

Who entitled to vote—list of electors and precinct registers. 75-3912.

75-3913.

Conduct of election—voting by absent electors.

Percentage of electors required to authorize bond issue. 75-3914.

75-3915. Meeting of board of trustees to canvass election returns—resolution for bond issue.

75-3916. Form of notice of sale of bonds. 75-3917. Publication of notice of sale.

75-3918. Sale of bonds.

75-3919. Form of bonds.

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75-3920. Printing of bonds. 75-3921. Registration of bonds—copy to be preserved. 75-3922. Payment for bonds and investment of bond moneys. 75-3923. County attorney to assist in the proceedings. 75-3924. School districts liable on bonds.
75-3925. Board of trustees to determine amounts necessary for payment of interest and principal on bonds-duties of treasurer and county commissioners. 75-3926. Levy of taxes by the board of county commissioners to pay interest and principal on bonds. 75-3927. Liability of the board of county commissioners. 75-3928. County treasurer to keep record of the various funds. 75-3929. Duty of county treasurer. 75-3930. Redemption of bonds—investment of sinking funds. 75-3931. Entry of payments and notice to clerk.
75-3932. Balances of sinking funds to be transferred to district general fund.
75-3933. School district liable on bonds. 75-3934. Duty of county treasurer. 75-3935. Penalty for failure to pay money from bonds into proper treasury. 75-3936. 75-3936. Repayment of loans advanced under bonds subsequently declared void.75-3937. Signers required on petition for bond elections in school districts, cities and towns and counties. 75-3938. Qualification of voters. 75-3939. Issuance of warrants in case of bank failures—bonds. 75-3940. 75-3941. When funding bonds may be issued. Resolution of trustees. 75-3942. Fixing specifications of bonds—registration—exchange of warrants for bonds. 75-3943. Tax levy for payment of principal and interest.

75-3901. (1224.1) Boards of trustees of school districts may issue coupon bonds for certain purposes. The board of trustees of any school district within this state is hereby vested with the power and authority to issue and negotiate coupon bonds on the credit of the school district for any one or more of the following purposes:

Disposal of moneys recovered from insolvent banks.

75-3946. Authorization to conduct school on cash basis when debt limit reached.

Sale of bonds—use of proceeds.

75-3944.

75-3945.

- (a) For the purpose of building, enlarging, altering, repairing, or acquiring by purchase one or more schoolhouses in said district; furnishing and equipping the same, and purchasing the necessary lands therefor.
- (b) For the purpose of constructing or acquiring by purchasing one or more teacherages in said district, furnishing and equipping the same, and purchasing the necessary lands therefor.
- (c) For the purpose of constructing or acquiring by purchasing one or more dormitories in said district, furnishing and equipping the same, and purchasing the necessary lands therefor.
- (d) For the purpose of constructing or acquiring by purchasing one or more gymnasiums in said district, furnishing and equipping the same, and purchasing the necessary lands therefor.
- (e) For the purpose of securing a water supply for the use of one or more of the schools of the district.
- (f) For the purpose of providing the necessary funds to pay the indebtedness duly apportioned to the school district upon its creation from territory formerly belonging to another district or districts, and represented by outstanding warrants or otherwise, or upon its separation from

another district or districts, or upon the rearrangement of the boundary line or lines between such district and another district or districts.

- (g) For the purpose of providing the necessary funds to pay and redeem optional or redeemable bonds when it is deemed to be for the best interests of the school district to issue refunding bonds, or for the purpose of providing the necessary funds to pay and redeem matured or maturing bonds when there are not sufficient funds available for the payment and redemption thereof.
  - (h) For the purpose of purchasing a school bus or buses.

History: En. Sec. 1, Ch. 147, L. 1927; amd. Sec. 1, Ch. 180, L. 1951.

#### Gymnasium

Where a district had voted a bond issue for the construction of an outdoor high school gymnasium and athletic field, the board having provided for athletic training under authority given it by subdiving proper instruction therein, whether within or outside of a building, becomes a necessary part of the school plant, and under subdivision (d) of this section, the board of trustees was authorized to issue bonds for its construction and would not be enjoined therefrom. McNair v. School District No. 1, 87 M 423, 426 et seq., 288 P 188, 69 ALR 866.

#### Purchase of Site

Where the only question submitted to the electors of a school district of the second class was whether bonds in a given amount should be authorized for the purpose of erecting a school building, although under this section whether to acquire a site for it might have been submitted as a part of the same proposition, authorization to issue the bonds did not carry with it the implied authority to purchase a

site. Nichols v. School District No. 3, 87 M 181, 188, 287 P 624.

#### References

Weber v. City of Helena, 89 M 109, 123, 297 P 455; Pierson v. Hendricksen, 98 M 244, 38 P 2d 991; Hendrickson v. Powell County, 112 M 1, 5, 112 P 2d 199; Rhoades v. School District No. 9, 115 M 352, 360, 142 P 2d 890, 160 ALR 1.

#### Collateral References

Schools and School Districts \$\infty 97(1)\$. 79 C.J.S. Schools and School Districts \$ 359.

43 Am. Jur., Public Securities and Obligations, p. 287, §§ 21 et seq.; p. 309, §§ 52 et seq.; p. 356, §§ 106 et seq.

Power and discretion of officer or board authorized to issue bonds of governmental unit as regards terms or conditions to be included therein. 119 ALR 190.

Particular purposes within contemplation of statute authorizing issuance of bonds or use of funds by school district for specified purposes. 124 ALR 883.

Rescission of vote authorizing school district or other municipal bond issue. 68 ALR 2d 1041.

75-3902. (1224.2) Limitations on amount of issue. The maximum amount for which any school district shall be allowed to become indebted by the issuance of bonds, or otherwise, including all indebtedness represented by outstanding warrants and outstanding bonds of previous issues, or unpaid balances thereon, is hereby fixed at five per centum (5%) of the value of the taxable property therein to be ascertained by the last completed assessment for state, county and school taxes previous to the incurring of such indebtedness. The words "value of the taxable property therein" as used herein shall be given the same meaning and construction and are used in the same sense as in section 6 of article XIII of the state constitution. All bonds issued in excess of such amount shall be null and void.

Whenever bonds are issued for the purpose of paying the redeeming bonds previously issued, or any unpaid balance thereon, all sinking and interest funds applicable toward the payment of such bonds shall be applied to such purpose and the refunding bond issue shall be decreased accordingly. BONDS 75-3903

History: En. Sec. 2, Ch. 147, L. 1927; amd. Sec. 1, Ch. 65, L. 1951.

## Issuing Less Bonds Than Authorized at Election

Issuance of public bonds (in the instant case bonds for the erection of a high school) in a lesser amount than that authorized by the election does not warrant injunction against their issuance. (See Const., Art. XIII, sec. 6). State ex rel. Berthot v. Gallatin County High School District, 102 M 356, 370, 58 P 2d 264.

#### Overlapping Districts

A school district has authority to issue bonds up to the prescribed limit notwithstanding the existing indebtedness of a high school district, the territory of which includes the entire territory of the school district. House v. School District No. 4, 120 M 319, 184 P 2d 285, 289, overruled in Rankin v. Love, 125 M 184, 191, 232 P 2d 998.

Where a high school district was created and the effect was to divide the powers already exercised by a school district in an attempt to expand the constitutional limit of indebtedness by the pyramiding of another tax unit upon the identical property and taxpayers of the existing school district, an injunction will issue restraining the trustees of the district from becoming

indebted to a sum greater than the then constitutional limit of 3% of the value of the taxable property; but such injunction was inoperative after July 1, 1951, which was the date that 75-3902 as amended in 1951 became operative raising the indebtedness limit to 5%. Rankin v. Love, 125 M 184, 232 P 2d 998, 1002, overruling House v. School District No. 4, 120 M 319, 184 P 2d 285.

Where a high school district is created which overlaps the common school districts, such high school district can incur indebtedness so long as such indebtedness, when apportioned among the common school districts in proportion to the assessed valuation of the property in each and this part, added to the existing indebtedness of the common school districts, did not bring the debt of any of the latter in excess of the limit prescribed by sec. 6, Art. XIII, of the Montana Constitution. Wright v. Browning High School District, 125 M 495, 240 P 2d 862, 863.

#### Collateral References

Schools and School Districts 97(3). 79 C.J.S. Schools and School Districts 361.

38 Am. Jur. 110, Municipal Corporations, §§ 422 et seq.; 43 Am. Jur. 287, Public Securities and Obligations, §§ 21 et seq.

75-3903. (1224.3) What forms of bonds may be issued. All bonds hereafter issued by any school district in this state shall be amortization bonds, if bonds in this form can be sold and disposed of at a reasonable rate of interest. If amortization bonds cannot be sold and disposed of at a reasonable rate of interest advantageous to the people for whose benefit the same are issued, then in such case serial bonds may be issued in place of amortization bonds.

The term "amortization bonds," as used in this act, is hereby defined as meaning that form of bonds on which a part of the principal is required to be paid each time interest becomes due and payable, which part payment on the principal increases at each succeeding installment in the same amount that the interest payment decreases, so that the combined amount due on principal and interest on each succeeding due date remains the same until the bonds are fully paid; provided, however, that the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

The term "serial bonds," as used in this act, is hereby defined as being a bond issue payable in annual installments, one installment, consisting of one or more bonds, becoming due and payable each year, the amount to be paid and redeemed each year being determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run; provided, however, that the installment becoming due and payable the first year may vary in amount from the others to the extent resulting from fixing the amount of each bond of the other installments; provided, however, that

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the installments becoming due and payable the first year, or the first and second years, may vary in amount from the others to the extent resulting from fixing the amounts of each bond of the other installments at one hundred (\$100.00) dollars, five hundred (\$500.00) dollars or one thousand (\$1,000.00) dollars as may be determined by the board of trustees.

History: En. Sec. 3, Ch. 147, L. 1927; amd. Sec. 1, Ch. 178, L. 1939; amd. Sec. 1, Ch. 45, L. 1945.

75-3904. (1224.4) Limitation of term of bonds—interest—redemption. No school district bonds shall be issued for a term longer than twenty (20) years, provided, however, that bonds issued to refund or redeem outstanding bonds shall not be issued for a longer term than ten (10) years, except when the unexpired term of the bonds to be refunded is in excess of ten (10) years, in which case the refunding bonds may be issued for such unexpired term. All bonds shall be redeemable when one-half of the term for which they were issued has expired and on any interest due date thereafter prior to their maturity, and such redemption right must be stated on the face of each bond. The interest shall not exceed six per centum (6%) and shall be payable semiannually.

History: En. Sec. 4, Ch. 147, L. 1927; amd. Sec. 1, Ch. 25, L. 1931; amd. Sec. 2, Ch. 178, L. 1939.

#### Collateral References

Schools and School Districts 79 C.J.S. Schools and School Districts 371.

75-3905. (1224.5) Dates of issue and payments. In order that the dates of payment of installments on school district bond issues may coincide as nearly as possible with the heaviest tax collections, all school district bonds shall preferably bear the date of some day in June or December, and for this reason the bonds may be dated back from the time of the actual sale thereof not exceeding five (5) months, but no interest shall be charged on these bonds before they have been delivered to the purchaser and payment made therefor; interest accrued on bonds according to their terms at the time of delivery shall either be refunded by the purchaser or deducted from the first interest payments falling due. The failure to date such bonds in June or December shall not in any way affect their validity.

History: En. Sec. 5, Ch. 147, L. 1927.

75-3906. (1224.6) Certain bonds may be issued without holding an election. Bonds issued for the purpose of providing the necessary funds to pay indebtedness to other district or districts, and bonds issued for the purpose of providing necessary funds to pay and redeem outstanding bonds may be issued without submitting the question of doing so at an election. In order to issue bonds for such purposes it shall only be necessary for the board of school trustees, at a regular or duly called special meeting of the board, to pass and adopt a resolution setting forth the facts in regard to the indebtedness to be paid or the bonds to be refunded, showing the reasons for issuing new bonds and fixing and determining the term and details of such new bonds, and then to give notice of the sale of such new bonds in the same manner that notice is required to be given of the sale of bonds authorized at a school election; provided that bonds issued to refund bonds issued prior

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to March 1, 1929, shall not be issued for a longer term than ten (10) years, and that bonds issued to refund bonds issued on or after March 1, 1929, shall not be issued for a longer term than the unexpired term of the bonds to be refunded; except when the unexpired term of the bonds to be refunded is in excess of ten (10) years, in which case the refunding bonds may be issued for such unexpired term and provided further that bonds issued on or after March 1, 1929, shall not be refunded by the issuance of such new bonds unless the rate of interest provided in such new bonds shall be at least one-half ( $\frac{1}{2}$ ) of one per cent (1%) lower than the rate of interest in the bonds to be refunded; and provided further that all refunding bonds so issued shall be sold in open competitive bidding, written bids and sealed bids for the purchase of such bonds to be considered the same as open bids.

History: En. Sec. 6, Ch. 147, L. 1927; amd. Sec. 1, Ch. 57, L. 1937; amd. Sec. 3, Ch. 178, L. 1939.

#### Collateral References

Schools and School Districts \$97(2).
79 C.J.S. Schools and School Districts
§ 360.

75-3907. (1224.7) Exchange of other forms of bonds for amortization bonds. Subject to the approval of the state board of land commissioners, the board of trustees of any school district in this state is hereby vested with the power and authority to issue amortization bonds for the purpose of refunding any outstanding bonds of such school district held by the state of Montana and which were not issued either as amortization or serial bonds, whether such outstanding bonds are due or not, and to exchange the same for such outstanding bonds. Such amortization bonds shall conform in all respects to the definition of amortization bonds as set forth in this act, and shall bear interest at such rate as may be agreed upon between the board of school trustees and the state board of land commissioners, but such rate of interest shall not be less than the interest rate on the old bonds and shall in no case exceed six per centum (6%) per annum. Such amortization bonds may be issued and exchanged for such outstanding bonds without submitting the question of issuing the same to an election, and it shall not be necessary to publish any notice of sale of such bonds. This section shall not be so construed as to deprive boards of school trustees of the right to issue and sell refunding bonds by the ordinary procedure and advertise the sale thereof as provided in this act.

History: En. Sec. 7, Ch. 147, L. 1927.

75-3908. (1224.8) Petition and election required for bond issues for other purposes. School district bonds for any other purpose than those stated in sections 75-3906 and 75-3907, shall not be issued unless authorized at a duly called election at which the question of issuing such bonds was submitted to the electors of the school district; and no such election shall be called unless there has been presented to the board of trustees a petition asking that such election be held and such question be submitted, signed by not less than twenty per centum (20%) of the qualified registered electors residing within the school district, who are taxpayers upon property therein and whose names appear on the last completed assessment roll for state, county and school district taxes.

History: En. Sec. 8, Ch. 147, L. 1927.

Petitions to Rescind Valid Bond Elections

There is no provision of the written law of this state that accords to the electors of a school district the right to petition either the school board or the courts to set aside or rescind a valid bond election simply because some of the electors may desire another election to vote on the question already favorably voted upon, especially where no fraud is either al-

leged or shown in the conduct of the election already held. Schmiedeskamp v. Board of Trustees of School District No. 24, 128 M 493, 278 P 2d 584, 586, 68 ALR 2d 1035.

#### Collateral References

Schools and School Districts \$\infty 97(4)\$. 79 C.J.S. Schools and School Districts \§ 366.

43 Am. Jur. 328, Public Securities and Obligations, §§ 71 et seq.

75-3909. (1224.9) Form, contents and proof of petition. The petition for the calling of an election to vote upon the question of issuing school district bonds shall plainly state the purpose of the proposed bond issue and shall estimate the amount of bonds necessary to be issued for such purpose or purposes. When the bonds sought to be issued are for two or more purposes, the amount to be issued for each single purpose shall be separately estimated in the petition. It may be in the form of one single petition or consist of more than one petition, all being identical in form and fastened together, after being circulated and signed, so as to form one petition before being delivered to the county clerk as hereinafter provided. The school district clerk or any one or more qualified electors of the school district may circulate the petition or petitions, and the clerk or each elector circulating such petition shall subscribe or attach to each of the petitions, circulated by him, an affidavit to the effect that the signatures are genuine and that the signers knew the contents thereof at the time of signing the same. The completed petition, before being presented to the board of school trustees, shall be delivered to the county clerk and recorder of the county in which the school district is situated, who shall examine the same and shall endorse thereon or attach thereto his certificate, which certificate shall set forth:

- (a) The total number of persons who are registered electors and taxpayers upon property within the school district whose names appear on the last completed assessment roll for state, county and school district taxes.
- (b) Which and how many of the persons whose names are subscribed to the petition are possessed of all of these qualifications.
- (c) Whether such qualified signers constitute more or less than twenty per centum (20%) of such registered electors and taxpayers within the district.

The county clerk and recorder shall promptly deliver or transmit such petition, with his certificate endorsed thereon or attached thereto, to the clerk of the board of school trustees of such district.

History: En. Sec. 9, Ch. 147, L. 1927.

75-3910. (1224.10) Meeting of board of trustees to consider petition and calling of election—notice of election—form. Upon such petition being received by the clerk of the school district, a meeting of the board of trustees shall be called to consider the same. The board of trustees shall be the judges of the sufficiency of the petition and the findings of such board

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shall be conclusive against the school district in favor of the innocent holder of bonds issued pursuant to the election called and held by reason of the presentation of such petition. If it is found that the petition is in proper form and bears the requisite number of signatures, the board shall pass and adopt a resolution which shall recite the essential facts in regard to the petition and its presentation, fix the exact amount of bonds proposed to be issued, which may be more or less than the amount estimated in the petition, determine the number of years through which the bonds are to be paid, fix the date of election, which shall not be less than twenty (20) days, nor more than thirty (30) days after the date of the passage and adoption of such resolution, appoint three electors of the district who are qualified to vote at such election to act as judges of election, at each voting place and direct the clerk to give notice of such election. The notice of election shall designate one or more schoolhouses in said school district as voting places and be in substantially the following form:

#### NOTICE OF SCHOOL DISTRICT BOND ELECTION

"Notice is hereby given by the undersigned clerk of School District No.  County, State of Montana, that pursuant to a certain resolution duly adopted at a meeting of the board of trustees of said school district held on the
roll for state, county and school district taxes prior to the holding of such election, will be held on the day of
at for the purpose of voting upon the question of whether
or not the board of school trustees shall be authorized to issue and sell
bonds of said school district in the amount of dollars,
(\$), bearing interest at a rate not exceeding six per centum (6%)
per annum, payable semiannually, for the purpose of (here
state purpose)
amortization or serial bonds, and amortization bonds will be the first
choice of the board of trustees. The bond to be issued, whether amortization or serial bonds, will be payable in installments over a period of
(state number) years.
The polls will be open from o'clock m. and until o'clock
m. of the said day.
Dated and posted this day of, A. D., 19
Clerk of School District No
of County, State of Montana."

If the bonds proposed to be issued are for more than one purpose, then each purpose shall be separately stated in the notice together with the proposed amount of bonds therefor.

The school district clerk shall, not less than fifteen (15) days before the day specified for such election, post notice of such election in not less than

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three (3) public places within the district, and in incorporated cities and towns at least one (1) notice must be posted at each voting place designated for such election.

In school districts of the first class the board of trustees must also cause the notice to be published once a week for two (2) successive weeks in some newspaper of general circulation in the district, if one be published therein, in addition to such posting.

History: En. Sec. 10, Ch. 147, L. 1927; amd. Sec. 4, Ch. 178, L. 1939.

#### Notice and Ballot Not Misleading

Where the notice of an election incident to a high school bond issue and the form of the ballot indicated that the exact details of the project would be subject to further consideration, leaving for future decision the question as to whether a new building would be erected or the old one repaired, depending upon the ex-

tent of federal aid, etc., objections to issuance of the bonds on grounds of doubtful purpose and having misled the voters were not meritorious. State ex rel. Berthot v. Gallatin County High School District, 102 M 356, 370, 58 P 2d 264.

#### References

Habel v. High School District "C" of Cascade County, 129 M 588, 292 P 2d 349, 352.

75-3911. (1224.11) Preparation of ballots—form. The school district clerk shall cause ballots to be prepared for all such bond elections, and whenever bonds for more than one purpose are to be voted upon at the same election, separate ballots shall be prepared for each purpose. All such ballots shall be substantially in the following form:

# OFFICIAL BALLOT SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BONDS—YES" if you wish to vote for the bond issue; if you are opposed to the bond issue make an X or similar mark in the square before the words "BONDS—NO."

	BO	NDS-	-YE	S.			
	BO	NDS-	-NO				
Histo	ry: E	n. Se	c. 11,	Ch.	147,	L.	1927
amd. Se	c. 5,	Ch. 1	78, L	. 193	39.		

75-3912. (1224.12) Who entitled to vote—list of electors and precinct registers. In all school district bond elections hereafter held only qualified registered electors residing within the district who are tax-payers upon property therein and whose names appear upon the last completed assessment roll for state, county and school district taxes, shall have the right to vote, provided however, that no such elector, otherwise qualified hereunder, shall be denied the right to vote by reason of the fact that the polling place for a general election for the precinct

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wherein he resides and is entitled to vote, lies within another school district. Upon the adoption of the resolution calling for the election, the clerk of the school district shall notify the county clerk of the date on which the election is to be held, and qualified persons shall be allowed to register for such election up till noon of the fifteenth (15) day prior to the date thereof. At that time the registration books shall be closed for such election, but it shall not be necessary to give any notice of such closing of the registration books.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the registered electors of such district who are taxpayers upon property therein and whose names appear on the last completed assessment roll for state, county and school district taxes, and who are entitled to vote at such election, and shall prepare precinct registers for such election, as provided in section 23-515, and deliver the same to the school district clerk who shall deliver the same to the judge prior to the opening of the polls. In school districts of the first class it shall be the duty of the school district clerk to post such lists in five (5) public and conspicuous places within the district at least ten (10) days prior to the date of election. It shall not be necessary to post such lists in districts of the second and third class. A charge of five cents per name for the use and benefit of the county shall be made by the county clerk for preparing such list and precinct registers.

History: En. Sec. 12, Ch. 147, L. 1927; amd. Sec. 19, Ch. 64, L. 1959; amd. Sec. 1, Ch. 127, L. 1959.

#### Compiler's Note

This section was amended twice by the 1959 legislature, once by Ch. 64 and once by Ch. 127. Chapter 64 did not contain a specific effective date, while Ch. 127 provided that the act should be in effect upon its approval. Chapter 127 was approved March 5, 1959. Each act amended this section in different respects, and as the amendments do not seem in conflict

with each other, the compiler has made a composite section incorporating the changes as made by each act.

#### Personal Property Taxpayers

The fact that some electors pay taxes only on personal property does not disqualify them from voting at the election for the names of such electors appear on the assessment roll the same as do those of the electors who pay taxes on real estate. Habel v. High School District "C" of Cascade County, 129 M 588, 292 P 2d 349, 351.

75-3913. (1224.13) Conduct of election—voting by absent electors. The bond election shall be conducted in the manner prescribed for the election of school trustees and return shall be made and canvassed in a similar manner. Any qualified elector entitled to vote at any school bond election who is absent from the county or who is physically incapacitated from attending the polling place at such election may vote thereat by complying with the provisions of chapter 13 of Title 23 of the Revised Codes of Montana, 1947, as amended, except that the application of an absentee or physically incapacitated person for ballot may be made at any time within fifteen (15) days next preceding such bond election.

The school district clerk whose duty it is to cause the ballots to be prepared for the bond election shall furnish the county clerk with a supply of ballots prior to the fifteenth day next preceding the election for the use of the county clerk in furnishing ballots to applicants for absent voters' ballots.

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The county clerk shall deliver to the judges of election at the opening of the polls all absent voters' ballots that he shall have received up to that time from absent or physically incapacitated electors. The procedure set out in chapter 13 of Title 23 of the Revised Codes of Montana, 1947, as amended, shall apply to the voting by absent electors with respect to school bond elections.

History: En. Sec. 13, Ch. 147, L. 1927; amd. Sec. 1, Ch. 203, L. 1955. Hehn v. Olson, — M —, 358 P 2d 431, NOTE.—See sec. 23-1203 for hours of election.

75-3914. (1224.14) Percentage of electors required to authorize bond issue. Whenever the question of issuing bonds for any purpose is submitted to the qualified electors of a school district at either a general or special school election not less than forty (40) per centum of the qualified electors entitled to vote on such question at such election must vote thereon, otherwise such question shall be deemed to have been rejected; provided, however, that if forty (40) per centum or more of such qualified electors do vote on such question at such election and a majority of such votes shall be cast in favor of such proposition, then such proposition shall be deemed to have been approved and adopted.

History: En. Sec. 14, Ch. 147, L. 1927; amd. Sec. 1, Ch. 40, L. 1935; amd. Sec. 1, Ch. 7, L. 1937.

75-3915. (1224.15) Meeting of board of trustees to canvass election returns—resolution for bond issue. If such election shall authorize the issuance of such bonds, the board of trustees shall within sixty (60) days from the date of such election pass and adopt a resolution providing for the issue of the bonds; provided that such bonds may be issued in one or more series or installments as the board may in such resolution direct. This resolution shall recite the amount of bonds to be issued, the maximum rate of interest, the purpose of the issue, the date they shall bear, and the period of time through which they shall be paid, and providing the manner of execution of same. It shall provide for giving preference to amortization bonds, but shall fix the denomination of serial bonds in case it shall be found necessary to issue bonds in that form, and shall direct the clerk to give notice of the sale of the bonds.

History: En. Sec. 15, Ch. 147, L. 1927.

#### Delay in Resolution for Bond Issue

Delay in the issuance of school district bonds after authorized at a special election for erection of high school building, occasioned by litigation and negotiations with the federal government in the financing thereof under National Recovery Act, did not affect the legality of original authority voted by the district, requirement to proceed within sixty days being directory, not mandatory. State ex rel. Sullivan v. School District No. 1 of Silver Bow County, 100 M 468, 475, 50 P 2d 252.

75-3916. (1224.16) Form of notice of sale of bonds. The notice of sale shall state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose, and shall be substantially in the following form:

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"NOTICE OF SALE OF SCHOOL DISTRICT BONDS.						
Notice is hereby given by the board of trustees of School District No  of						
Amortization bonds will be the first choice and serial bonds will be the second choice of the said school board.						
If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the said board of trustees may determine upon at the time of sale, both principal and interest to be payable in semiannual installments during a period of years from the date of issue.						
If serial bonds are issued and sold they will be in the amount of						
The said bonds, whether amortization or serial bonds, will bear date of						
The said bonds will be sold for not less than their par value with accrued interest, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The board of trustees reserves the right to reject any and all bids and to sell the said bonds at private sale.						
All bids other than by or on behalf of the state board of land commissioners must be accompanied by a certified check in the sum of						
All bids should be addressed to the undersigned clerk.						
Chairman, School District No						

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ATTEST: Clerk, School District No. of ...... County. Address: ....."

History: En. Sec. 16, Ch. 147, L. 1927;

amd. Sec. 6, Ch. 178, L. 1939.

Designation of fiscal agents, secs. 79-1701

to 79-1713.

(1224.17) Publication of notice of sale. The school district clerk shall cause such notice to be published once a week for four successive weeks in some newspaper printed and published in the county in which the school district is situated, and when the amount of such bonds to be sold is ten thousand dollars (\$10,000.00) or more a regular notice thereof shall be published in some daily newspaper of the state printed and published once in a city of the first class and having a general circulation throughout the state, the first publication to be not less than thirty (30) days prior to the date of sale. When the amount of bonds to be sold is ten thousand dollars (\$10,000.00) or more, is so directed by the board of trustees, the clerk shall also cause a brief notice of the bond sale to be published in some newspaper in the City of New York. The clerk shall immediately after the first publication of such notice mail a copy thereof to the state board of land commissioners.

History: En. Sec. 17, Ch. 147, L. 1927; amd. Sec. 7, Ch. 178, L. 1939.

#### Collateral References

Schools and School Districts 97(5). 79 C.J.S. Schools and School Districts § 370 et seq.

75-3918. (1224.18) Sale of bonds. The board of trustees shall meet at the time and place fixed in the notice to consider bids on the bond issue. The bonds shall be sold at not less than par and accrued interest and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in considering bids on these classes of bonds, the board shall take into consideration not only the rate of interest demanded on each kind, but also every other known element affecting the total cost of the bonds to the district when paid in full. The board of trustees shall accept the bid which they shall judge most advantageous to the school district; provided, that no bid shall be accepted which will require the bonds to bear a rate of interest exceeding six per centum (6%) per annum. No attorney fees, brokerage or other fees, or commissions of any kind shall be paid to any person or corporation for assisting in the proceedings or in the preparation of the bonds, or in negotiating the sale thereof. The trustees are authorized to reject any or all bids and to sell the bonds at private sale if they deem it for the best interests of the district, provided, however, that such bonds shall not be sold at less than par and accrued interest.

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History: En. Sec. 18, Ch. 147, L. 1927.

Collateral References

43 Am. Jur. 373, Public Securities and Obligations, §§ 126 et seq.

Sale of municipal or other public bonds at less than par or face value. 91 ALR 7 and 162 ALR 396.

(1224.19) Form of bonds. It shall not be necessary for the board of school district trustees to prescribe the detailed form of the bonds to be issued, but they must conform to all legal requirements for the payment thereof, whether they are issued as amortization or serial bonds. Such bonds shall be issued in the name of the school district and shall be signed by the chairman of the board of trustees and the school district clerk and attested with the corporate seal of the district if it has such seal. The coupons attached to the bonds shall also be signed by the said chairman and clerk. If the bonds are purchased by the state board of land commissioners, all payments of both principal and interest shall be made at the office of the state treasurer.

History: En. Sec. 19, Ch. 147, L. 1927; amd. Sec. 9, Ch. 260, L. 1959.

Collateral References

Schools and School Districts \$\sim 97(6). 79 C.J.S. Schools and School Districts

(1224,20) **Printing of bonds.** Under the direction of the board of trustees, the district clerk shall cause the bonds with coupons thereto attached to be printed or lithographed at the expense of the school district at the lowest commercial rates.

History: En. Sec. 20, Ch. 147, L. 1927.

(1224.21) Registration of bonds—copy to be preserved. When duly executed by the chairman and the clerk, all school district bonds shall be registered by the county treasurer in a book provided for that purpose before being delivered to the purchaser. This registration shall show the number and amount of each bond, the date of issue, date redeemable, the name of the purchaser, and the amount and due date of all payments required on the bonds. The school district clerk shall also provide the county treasurer with an unsigned and canceled printed copy of each issue of said school district bonds hereafter issued to be preserved in his office.

History: En. Sec. 21, Ch. 147, L. 1927.

75-3922. (1224.22) Payment for bonds and investment of bond moneys. In case the state board of land commissioners is the purchaser of the bonds, the county treasurer shall forward the registered bonds to the secretary of the board who shall cause the same to be delivered to the state treasurer and to be paid in the manner provided by law. In case the bonds are purchased by other investors the county treasurer shall deliver the bonds to them upon receiving full payment therefor. All moneys arising from the sale of such bonds shall be paid to the county treasurer and by him credited to the school district issuing the same, and shall be immediately available for the purpose for which the bonds were issued and no other purpose, except that moneys realized from the sale of bonds by a school district for the purpose of construction, for which there is no immediate demand may be invested in short-term obligations of the 75-3923 SCHOOLS

United States of America, when requested by the governing body of the school district; interest earned from such investments shall be credited to the said school district, nothwithstanding the provisions of subsection (6) of section 16-2618.

History: En. Sec. 22, Ch. 147, L. 1927; amd. Sec. 2, Ch. 223, L. 1961.

Collateral References

Schools and School Districts 97(9). 79 C.J.S. Schools and School Districts § 374.

75-3923. (1224.23) County attorney to assist in the proceedings. It is hereby expressly made a part of the official duties of the county attorney of every county of this state to advise and assist the boards of school district trustees of his county in their bonding proceedings. Before any transcript of school district bonding proceedings is transmitted to the secretary of the state board of land commissioners, he shall carefully examine such transcript, and the same shall not be transmitted until he shall attach thereto his opinion that the proceedings are in full compliance with the statutes.

History: En. Sec. 23, Ch. 147, L. 1927.

Collateral References

District and Prosecuting Attorneys 88 10, 12(1).

75-3924. (1224.24) School districts liable on bonds. The full faith, credit and taxable resources of every school district issuing bonds under the provisions of this act are hereby solemnly pledged for the repayment of such bonds with interest according to their terms. For the purpose of making the provisions of this act enforceable every school district is hereby declared to be a body corporate which may sue and be sued by or in the name of the board of trustees of such school district.

History: En. Sec. 24, Ch. 147, L. 1927.

Collateral References

Schools and School Districts 97(10). 79 C.J.S. Schools and School Districts 375.

(1224.25) Board of trustees to determine amounts necessary for payment of interest and principal on bonds-duties of treasurer and county commissioners. The board of trustees of every school district in this state having outstanding bonds shall on or before the second Monday of July of each year prepare a statement and certify to the board of county commissioners the amount of money necessary to be raised by taxation for the ensuing year to pay the interest and retire part or all of the principal of each series of its outstanding bonds according to the terms and conditions of such series of bonds and the redemption plans of such board of trustees; but the minimum amount determined upon and certified to the board of county commissioners shall in all cases be sufficient to pay all interest and all installments on principal becoming due during the ensuing year on all series of the outstanding bonds of the district issued subsequent to March 1st, 1924; and it shall also in all cases be sufficient to pay all interest becoming due during the ensuing year on each series of outstanding bonds issued prior to March 1st, 1924, and to place in the sinking fund such an amount as will be obtained by dividing the full amount of such

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series by the number of years for which the bonds were issued; provided, however, that in the case of a joint school district one copy of such certificate and statement must be transmitted to the county superintendent of each county in which any part of the joint district is situated, instead of to the board of county commissioners.

The county treasurer shall examine the statement of the amount or amounts determined upon by the board of school trustees and certified to the board of county commissioners, and if he finds that the amount certified is less than the minimum amount as defined in this section, then he shall raise the amount to such minimum for each series of bonds; and if the board of trustees shall fail to certify any amount whatever, then the county treasurer shall make out the statement and certify to the board of county commissioners the minimum amount for each series of bonds as defined in this section.

History: En. Sec. 25, Ch. 147, L. 1927.

#### Collateral References

Schools and School Districts 103(1). 79 C.J.S. Schools and School Districts 383.

75-3926. (1224.26) Levy of taxes by the board of county commissioners to pay interest and principal on bonds. The board of county commissioners of every county of this state shall at the time of making the annual levy of taxes for county purposes levy taxes for the same year upon all taxable property within every school district of its county having outstanding bonds for the payment of interest and principal on such bonds as certified to it under the provisions of the preceding section. The taxes so levied shall in all respects be collected as state and county taxes and shall be a lien upon the property assessed and taxed the same as such taxes.

History: En. Sec. 26, Ch. 147, L. 1927.

## Collateral References

Schools and School Districts 108(4). 79 C.J.S. Schools and School Districts \$408.

(1224.27) Liability of the board of county commissioners. If the board of county commissioners shall fail in any year to make a levy for any issue or series of bonds of any school district sufficient to raise the amount necessary for payment of interest and principal, if any, becoming due during the next ensuing year, or to raise an amount sufficient to pay the interest becoming due during such year and to create a sinking fund for payment of the principal of such bonds on their maturity, as such amounts are certified to it under the provisions of section 75-3925, the holder of any bond of such issue or series, or any taxpayer paying taxes upon property situated in such school district, may apply to the district court of the county in which such school district is situated for a writ of mandate to compel the board of county commissioners of such county to make a sufficient levy for such purposes; and if, upon the hearing of such application, it shall appear to the satisfaction of the court that the board of county commissioners of such county has failed to make any levy whatever, or has made a levy but that the same is insufficient to raise the amount required to be raised as shown by the statement provided for by section 75-3925, the court shall determine the amount of such deficiency and shall issue a

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writ of mandate directed to and requiring the said board of county commissioners, at the next meeting thereof for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in such school district sufficient to raise the amount of such deficiency, which levy shall be in addition to any levy required to be made at that time for the year then next ensuing; provided, however, that any costs which may be allowed or awarded the petitioner in any such proceeding shall be paid by the members of the board of county commissioners, and shall not be a charge against either such school district or the county.

History: En. Sec. 27, Ch. 147, L. 1927,

Collateral References

Schools and School Districts \$\sim 97(10)\$. 79 C.J.S. Schools and School Districts \$ 375.

75-3928. (1224.28) County treasurer to keep record of the various funds. The county treasurer shall keep a separate sinking and interest fund for each school district, and shall charge all moneys collected from taxes levied for the payment of interest and principal of school district bonds to the several funds to which they properly belong, and the money in each such fund shall be used for the payment of the interest and principal of the bonds belonging to the same, and for no other purpose whatever, except as hereafter provided in this act.

History: En. Sec. 28, Ch. 147, L. 1927.

Collateral References

Schools and School Districts \$\infty 97(9)\$. 79 C.J.S. Schools and School Districts \$ 374.

75-3929. (1224.29) Duty of county treasurer. The county treasurer shall pay from the proper funds applicable thereto all amounts of interest and principal on school district bonds as such interest and principal becomes due, upon the presentation and surrender of the coupon or coupons, bond or bonds to be paid; provided, however, that if the bonds are held by the state of Montana, then all such payments shall be remitted to the state treasurer who shall cancel the coupons or bonds and return the same to the county treasurer together with his receipt; and provided further that if the bonds are not held by the state of Montana, and the interest or principal is made payable at some designated bank or financial institution, then the treasurer shall remit the amount due for interest or principal to such bank or financial institution for payment against the surrender of the canceled coupons or bonds.

Whenever any school district bond, or installment thereon, shall become due and payable, interest shall cease thereon on such date; provided, however, that if such bond shall be presented for payment, or payment of any installment shall be demanded, when the same becomes due, and payment of such bond or installment shall not be made because of sufficient funds not being available for such purpose, interest shall continue thereon until payment is made.

Any and all installments on interest and principal on bonds held by the state not promptly paid when due shall draw interest at the rate of six

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per centum (6%) per annum from the date due until actually paid, irrespective of the rate of interest on the bonds themselves.

History: En. Sec. 29, Ch. 147, L. 1927.

75-3930. (1224.30) Redemption of bonds—investment of sinking funds. Whenever there is available money in any school district bond sinking fund sufficient to pay and redeem one or more bonds of such series or issue held by the state of Montana, the county treasurer must apply such available money in payment of as many of such bonds as the same will pay. Not less than thirty (30) days before the next interest due date the county treasurer must give notice to the state board of land commissioners that on such interest due date such bond or bonds will be paid, and such county treasurer, before such interest due date, must remit to the state treasurer the amount required to pay such bond or bonds with interest. Upon receipt of such amount, the state treasurer must cancel such bond or bonds, and all unpaid coupons attached thereto, and return the same, with his receipt, to the county treasurer, provided, however, that nothing in this section shall be so construed as to permit the issuance of refunding bonds by any school district for the purpose of redeeming, before maturity, any bond or bonds held by the state, nor to grant the right to pay any bond or bonds held by the state with the proceeds of any refunding bond issue, except as provided in section 75-3907.

Whenever there is available money in any school district bond sinking fund sufficient to pay one or more optional bonds of such issue or series, and which optional bonds are not yet due but are then redeemable, or will become redeemable on the next interest due date, and such bonds are not held by the state of Montana, the county treasurer must apply such available money in payment and redemption of as many of such bonds as the same will pay and redeem. The county treasurer must give notice to the holder of such bond or bonds, if known to him, or to any bank or financial institution at which such bonds are payable, at least thirty (30) days before the next interest due date, that such bond or bonds will be paid and redeemed on such date. If such bonds are payable at some bank or financial institution the county treasurer must remit to such bank or financial institution, before such interest due date, an amount sufficient to pay and redeem such bond or bonds. If such bond or bonds are not presented for payment and redemption on such interest due date interest shall cease thereon on such date.

Whenever there is any money available in any school district bond sinking fund sufficient to pay and redeem one or more outstanding bonds not yet due or redeemable, and not held by the state of Montana, the county treasurer, at the direction of the board of trustees of such district shall purchase such bond or bonds of the district, if this can be done at not more than par and accrued interest or at such reasonable premium as the board of trustees may feel justified in paying, not in any case exceeding six per centum (6%).

If the board cannot purchase any of its outstanding bonds at such reasonable price, then the available sinking funds shall be invested by the county treasurer, under the direction of the board of trustees in its 75-3931 SCHOOLS

own district warrants, or in treasury certificates of the United States or in interest-bearing bonds of the United States or of the state of Montana or of any county of the state of Montana or in warrants of the state of Montana or warrants of any county of the state of Montana; provided, however, that such sinking funds shall be invested only in securities that become due and will be paid in ample time before the funds are required for the payment of the bonds of the district.

History: En. Sec. 30, Ch. 147, L. 1927; amd. Sec. 1, Ch. 77, L. 1929.

75-3931. (1224.31) Entry of payments and notice to clerk. The county treasurer shall make the necessary entries of all such payments of interest and principal on his bond registration record and shall promptly notify the clerk of the school district of the payments made and shall at the end of each month deliver the canceled coupons and securities to the county clerk, who shall file same in his office.

History: En. Sec. 31, Ch. 147, L. 1927.

75-3932. (1224.32) Balances of sinking funds to be transferred to district general fund. When all of the bonds of any school district, together with all interest thereon, have been fully paid, all money remaining in the sinking fund for such school district and all moneys which may come into such sinking fund from the payment of the delinquent taxes shall be transferred by the county treasurer to the general fund of such school district.

History: En. Sec. 32, Ch. 147, L. 1927.

Collateral References

Schools and School Districts 17.

78 C.J.S. Schools and School Districts

18.

75-3933. (1227) School district liable on bonds. The faith of each school district is solemnly pledged for the payment of the interest and the redemption of the principal of the bonds which shall be issued under the provisions of this chapter. And for the purpose of enforcing the provisions of this chapter each school district shall be a body corporate, which may sue and be sued by or in the name of the board of school trustees of such district.

History: En. Sec. 4, p. 65, L. 1883; re-en. Sec. 1953, 5th Div. Comp. Stat. 1887; re-en. Sec. 1964, Pol. C. 1895; re-en. Sec. 1007, Rev. C. 1907; re-en. Sec. 2018, Ch. 76, L. 1913; re-en. Sec. 1227, R. C. M. 1921.

## Collateral References

Schools and School Districts 97(10). 79 C.J.S. Schools and School Districts § 375.

75-3934. (1231) Duty of county treasurer. The county treasurer shall pay out of any moneys belonging to the school district the interest upon any bonds issued under this chapter by such district, when the same shall become due, upon the presentation at his office of the proper coupon, which shall show the amount due and the number of the bond to which it belonged; and all coupons so paid shall be reported to the school trustees at their first meeting thereafter. But the board of trustees of any school district issuing bonds may, by resolution, direct that said bonds and the interest thereon shall be payable in any city in the United States, and then such

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bonds and coupons shall be made payable at such bank in said city as shall be designated by the county treasurer at the time of issue; and all bonds and coupons so paid must be returned to the county treasurer and by him canceled and exhibited to the county commissioners at their first meeting thereafter.

History: Ap. p. Sec. 7, p. 66, L. 1883; re-en. Sec. 1956, 5th Div. Comp. Stat. 1887; re-en. Sec. 1968, Pol. C. 1895; re-en. Sec. 1011, Rev. C. 1907; amd. Sec. 2022, Ch. 76, L. 1913; re-en. Sec. 1231, R. C. M. 1921.

#### Collateral References

Schools and School Districts \$97(9). 79 C.J.S. Schools and School Districts § 374.

75-3935. (1233) Penalty for failure to pay money from bonds into proper treasury. If any of the school trustees of any district shall fail or refuse to pay into the proper county treasury the money arising from the sale of any bonds provided for by this chapter, they shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state penitentiary for a term of not less than one year nor more than ten years.

History: En. Sec. 9, p. 66, L. 1883; re-en. Sec. 1958, 5th Div. Comp. Stat. 1887; re-en. Sec. 1970, Pol. C. 1895; re-en. Sec. 1013, Rev. C. 1907; re-en. Sec. 2024, Ch. 76, L. 1913; re-en. Sec. 1233, R. C. M. 1921.

## Collateral References

Schools and School Districts 97(5). 79 C.J.S. Schools and School Districts 370.

(1243) Repayment of loans advanced under bonds subsequently declared void. Whenever heretofore money has been loaned or advanced to the board of school trustees of any district for the erection of a schoolhouse or schoolhouses therein, by any person or corporation, in reliance upon the proceeds of the sales of bonds for the repayment of the same, the issuance of which bonds has been voted for by a majority of the electors of such district, voting at an election held for the purpose of authorizing the issuance of the same for the erection of a schoolhouse or schoolhouses, which said money has been used by such board of school trustees in the erection of a schoolhouse or schoolhouses in such district, but which bonds, when issued, have been adjudged and held to be void or invalid by the supreme court of the state, the money so loaned or advanced may be repaid, together with the interest thereon covering the period for which interest has not been paid, at the rate specified in said bonds so held to be void; said payment to be made by the board of school trustees to the person or corporation who or which had loaned or advanced the same, from the proceeds of the sale of any bonds thereafter issued for the purpose of building one or more schoolhouses in said district, or for any other school purpose.

History: En. Sec. 2038, Ch. 76, L. 1913; re-en. Sec. 1243, R. C. M. 1921.

### Constitutionality

This section is constitutional. State v. Dickerman, 16 M 278, 292, 40 P 698.

Collateral References

Schools and School Districts \$344.

75-3937. (1252) Signers required on petition for bond elections in school districts, cities and towns and counties. No election for the issuance of bonds of any school district, or of any town, or city, or county shall be

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called except upon presentation of a petition therefor to the board of school trustees, or to the town or city council, or to the board of county commissioners, as the case may be, signed by at least twenty per cent of the qualified registered electors who are taxpayers upon property within said school district, town, city or county, and whose names appear on the assessment roll for the year next preceding such election, praying for the calling of said election; provided that the board of county commissioners, board of school trustees, town or city council, as the case may be, shall determine as to the sufficiency of such petition, and the findings of such governing body shall be conclusive against the municipality in favor of any innocent holder of the bonds issued under and by virtue of authority conferred by election provided by this act.

History: En. Sec. 1, Ch. 104, L. 1921; re-en. Sec. 1252, R. C. M. 1921.

#### References

Brown v. Town of Cascade, 62 M 564, 565, 205 P 828; State ex rel. Henderson v. Dawson County, 87 M 122, 129, 142, 286 P 125

## Collateral References

Schools and School Districts \$97(4), 79 C.J.S. Schools and School Districts § 366.

75-3938. (1253) Qualification of voters. In all elections hereafter held for the issuance of bonds of any school district, town or city, only qualified registered electors who are taxpayers upon property therein, and whose names appear on the assessment roll for the year next preceding such election, shall be entitled to vote thereat; provided, however, that no such elector, otherwise qualified hereunder, shall be denied the right to vote by reason of the fact that the polling place for a general election for the precinct wherein he resides and is entitled to vote, lies within another school district, town or city.

History: En. Sec. 2, Ch. 104, L. 1921; amd. Sec. 1, Ch. 17, Ex. L. 1921; re-en. Sec. 1253, R. C. M. 1921; amd. Sec. 1, Ch. 79, L. 1959.

## References

Brown v. Town of Cascade, 62 M 564, 565, 205 P 828; Weber v. City of Helena, 89 M 109, 119, 297 P 455.

75-3939. (1254.1) Issuance of warrants in case of bank failures—bonds. The board of school trustees of any school district in the state of Montana shall have, and are hereby given, in addition to powers already conferred upon them, authority, whenever at any time such district shall have all or a part of its funds deposited in any bank which has become insolvent, to issue warrants to the amount of not to exceed one hundred per centum of such funds so deposited for teachers' salaries, school supplies and equipment, new buildings heretofore completed, necessary repairs, school buildings and heating plants therein, or other necessary expenses incurred in the maintenance of schools in such district, and, in case such funds so deposited are not recovered in sufficient amount to pay off and discharge such warrants, and to levy taxes therefore would be burdensome to such district or would exceed the limit of taxes permitted by law to be levied, to issue negotiable coupon bonds therefor and to pledge the credit and resources of the district for the payment of the principal and interest of such bonds. The provisions of this act shall apply to rural school districts organized under

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sections 1040 through 1048, whether the funds shall have been distributed to the subdistrict or not; and the board of trustees of such rural school district shall have the power to negotiate bonds, as herein provided for trustees of school districts, for the purpose of funding outstanding warrants of the subdistricts thereof, and to pledge the credit and resources of the rural school district for the payment of the principal and interest of such bonds.

History: En. Sec. 1, Ch. 128, L. 1923.

NOTE.—Sections 1040 through 1048, referred to above, were repealed by Sec. 1, Ch. 88, Laws 1941.

Collateral References

Schools and School Districts 95(1), 97(1).

79 C.J.S. Schools and School Districts 88 346, 359.

75-3940. (1254.2) When funding bonds may be issued. The funding bonds authorized by this act shall be issued under the following conditions, to wit:

- 1. When the board of trustees shall have listed certain unpaid warrants, and certified that they were regularly issued subsequent to July 1st, 1922, for purposes set forth in section 75-3939, and there is not sufficient money, other than that deposited in insolvent banks, to the credit of such school district available for the payment of such outstanding warrants.
- 2. When in the judgment of the board of trustees of such district to levy and collect a tax for the purpose of paying such warrants will be a hardship and burden to said school district.
- 3. When sufficient money has not been recovered from such insolvent bank or banks to pay or discharge such warrants.
- 4. Provided, it shall not be necessary to submit the question of the issuance of such bonds to fund such indebtedness to the vote of the electors of such school district.

History: En. Sec. 2, Ch. 128, L. 1923.

#### Collateral References

Schools and School Districts 97(2).
79 C.J.S. Schools and School Districts

43 Am. Jur., Public Securities and Obligations, p. 287, §§ 21 et seq; p. 392, §§ 151 et seq.

Funding or refunding obligations as subject to conditions respecting limitation of indebtedness or approval by voter. 97 ALR 442.

Power of municipality or other governmental body to issue refunding bonds to retire obligation in respect of which the creation and maintenance of a sinking fund by taxation is required by constitutional or statutory provision. 157 ALR 794.

75-3941. (1254.3) Resolution of trustees. The board of school trustees shall, by resolution, declare that the existing indebtedness shall be funded by the issuance of bonds, which said resolution shall describe the amount and kinds of indebtedness, which is to be funded, and declare and certify as to the validity of such indebtedness, and that the conditions exist as specified in section 75-3940, which resolution and certificate shall be conclusive against the district as to the validity of indebtedness so funded in favor of holders of said bonds.

History: En. Sec. 3, Ch. 128, L. 1923.

79 C.J.S. Schools and School Districts § 360.

#### Collateral References

Schools and School Districts 97(2).

75-3942. (1254.4) Fixing specifications of bonds—registration—exchange of warrants for bonds. The board of school trustees shall, by

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resolution fix the rate of interest which said bonds shall bear not exceeding six per centum per annum, payable semiannually; the denomination, form and terms thereof, which must be serial bonds for a term not to exceed ten years; such bonds and the coupons attached thereto shall bear the signatures of the chairman of the board of trustees and the clerk of said district; and the corporate seal of the school district shall be affixed to each of the bonds.

Upon execution, the bonds shall be deposited with the county treasurer, who shall register the same in a book provided for that purpose which shall show the number and amount of each bond, its date, the date payable and redeemable, and the person to whom the same is issued, and the county treasurer shall deliver the same to the person or persons to whom sold upon their making payment for the same or if so directed by the board of trustees to such person or persons who shall surrender an amount of warrants, which, with accrued interest, shall equal the par value of such bonds and such warrants so received by the treasurer shall be immediately canceled.

History: En. Sec. 4, Ch. 128, L. 1923; amd. Sec. 10, Ch. 260, L. 1959.

Collateral References
Schools and School Districts ← 97(6).
79 C.J.S. Schools and School Districts

75-3943. (1254.5) Tax levy for payment of principal and interest. The board of school trustees shall provide for a tax levy to pay the principal and interest of such bonds as they mature in accordance with the provision of the laws relating to taxes and sinking fund.

§ 371.

History: En. Sec. 5, Ch. 128, L. 1923.

Collateral References

Schools and School Districts 108(4).

(1254.6) Sale of bonds—use of proceeds. When the board issues any bonds authorized by this act, it is its duty to sell the same and it shall give notice by advertisement in some newspaper published in this state at least once a week for four consecutive weeks, the date of the first publication to be not less than thirty days prior to date of sale; such advertisement must state the date, hour and place where such sale will take place and shall describe the bonds to be sold, giving the amount, denomination, rate of interest, time payable, time redeemable and purpose of the proposed bond issue. The trustees are authorized to reject any and all bids and sell such bonds at private sale if they deem it for the best interests of the district; the proceeds from the sale of such bonds to be used wholly for the purpose of taking up and retiring the outstanding indebtedness of the district as described in the resolution provided for by section 75-3941. Provided, however, that the board may, if in its opinion it would be to the best interests of the district so to do, execute an exchange of such bonds by issuing the same to any person or persons holding the warrants of said district issued as provided in this act, the exchange to be made dollar for dollar.

History: En. Sec. 6, Ch. 128, L. 1923.

Collateral References

Schools and School Districts 97(5).

79 C.J.S. Schools and School Districts § 370.

43 Am. Jur. 373, Public Securities and Obligations, §§ 126 et seq.

75-3945. (1254.7) Disposal of moneys recovered from insolvent banks. Any money recovered from such insolvent bank or banks, after the date of the issuance of such bonds, shall be credited to the sinking fund for the retirement of such bonds.

History: En. Sec. 7, Ch. 128, L. 1923.

## Collateral References

Schools and School Districts 97(9). 79 C.J.S. Schools and School Districts § 374.

(1254.8) Authorization to conduct school on cash basis when debt limit reached. In case the total indebtedness of a school district has reached the limit of three per centum (3%) provided in section 6 of article XIII of the constitution of the state of Montana, it shall be lawful for said school district and it is hereby authorized and empowered to thereafter manage and conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of said school district out of the eash in the funds of such school district and derived from its current revenues, under such restrictions and regulations as may be imposed by the board of trustees of said district by resolution duly adopted and spread upon the minutes of the board; provided, however, that the trustees of said school district must set apart sufficient moneys to pay the interest upon its valid outstanding bonded indebtedness and any sinking funds therein provided for, and shall be authorized to pay all valid claims against funds raised by tax especially authorized by law for the purpose of paying such claims.

History: En. Sec. 1, Ch. 34, Ex. L. 1933.

## Collateral References

Schools and School Districts \$27. 78 C.J.S. Schools and School Districts § 318.

# CHAPTER 40

## MANUAL AND INDUSTRIAL TRAINING

Section 75-4001. Establishment of manual and industrial training.

75-4002. Designation of districts and character of instruction.

75-4003. Courses.

75-4004. Qualification of teachers.

Special courses in districts with population of over ten thousand. Support from general school fund—buildings and equipment.

75-4006.

75-4007. Penalty for schools not complying with this act.

75-4001. (1255) Establishment of manual and industrial training. Elementary manual and industrial training which shall include industrial art may form a part of the required course of study in all grades of the public schools of the state of Montana. The superintendent of public instruction shall formulate a course of study, or he may approve courses of study formulated by local school officials, which meet the requirements of this section. The clerk of each school district, in his annual report to the

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county superintendent, shall state whether the above provisions have been complied with within the schools of his district.

History: En. Sec. 1, Ch. 131, L. 1911; re-en. Sec. 1700, Ch. 76, L. 1913; re-en. Sec. 1255, R. C. M. 1921.

Collateral References

Schools and School Districts € 164. 79 C.J.S. Schools and School Districts § 485.

47 Am. Jur. 441, Schools, §§ 200 et seq.

Extent of legislative power with respect to attendance and curriculum in schools. 39 ALR 477 and 53 ALR 832.

Power and duty of school authorities to maintain kindergartens or specialized departments, 70 ALR 1313,

75-4002. (1256) Designation of districts and character of instruction. All school districts having a population of more than five thousand shall, and districts of less population may, maintain at least one manual training school suitably equipped and designated to furnish manual and industrial instruction to pupils who are above the fifth grade. Said schools shall furnish instruction in elementary wood, metal, and textile work; in mechanical and industrial drawing; and in communities where applicable, in agriculture, mineralogy, and technical mining; and for girls above the first grade, instruction in household management, decoration, and economics, and in needlework. They shall also include instruction in industrial history and geography, and in the industrial materials, processes, and products, with special reference to the industrial pursuits of the communities in which they are situated.

History: En. Sec. 2, Ch. 131, L. 1911; re-en. Sec. 1700, Ch. 76, L. 1913; re-en. Sec. 1256, R. C. M. 1921.

75-4003. (1257) Courses. The courses to be presented in these schools shall provide:

1. A general culture, intelligence, and skill for those pupils whose school attendance will end with the elementary or secondary grades; and

A progressive development designed to prepare directly for efficient work in the related technical and scientific courses of the higher institutions of learning.

The courses shall be modified to meet, in the largest measure, the needs of each class of pupils.

Nothing in this section shall be understood as forbidding any school from using other materials than those herein specified, nor as preventing a different assignment of work by grades; provided, that all courses shall have the approval of the state board of education.

History: En. Sec. 2, Ch. 131, L. 1911; re-en. Sec. 1700, Ch. 76, L. 1913; re-en. Sec. 1257, R. C. M. 1921.

75-4004. (1258) Qualification of teachers. Teachers of such schools shall have had special preparation for such instruction and shall be holders of special manual training teachers' certificates, which the superintendent of public instruction is hereby empowered to grant, when satisfied that the applicant has received a sufficient general education and the professional and technical preparation necessary for such manual and industrial training.

History: En. Sec. 2, Ch. 131, L. 1911; re-en. Sec. 1700, Ch. 76, L. 1913; re-en. Sec. 1258, R. C. M. 1921.

Collateral References

Schools and School Districts → 127. 78 C.J.S. Schools and School Districts § 154.

75-4005. (1259) Special courses in districts with population of over ten thousand. In all school districts having a population of over ten thousand there shall be, and in school districts of less population there may be, maintained schools of special courses in connection with manual training, or city or county high schools, designed to furnish a direct vocational training, including training in agricultural pursuits and mining for which there shall be a local demand. Classes shall be formed when not less than twenty applicants desire instruction in any vocation. Pupils who have reached the age of twelve years, and who have completed not less than the general schoolwork assigned to the first five grades, may be admitted to these courses upon such terms as the board of trustees of the district may prescribe; pupils above the age of fourteen, together with adults, may be admitted to evening classes providing similar instruction, upon such terms of admittance as the trustees may prescribe; provided, that there shall in no case be any charge for tuition. Teachers of such classes shall be holders of special certificates issued by the superintendent of public instruction, specifying the subject or subjects which the holder is entitled to teach. Applicants for such certificates must present satisfactory evidence not only of general educational qualifications, but of special training and practical experience in the vocations which they are to teach.

History: En. Sec. 3, Ch. 131, L. 1911; re-en. Sec. 1700, Ch. 76, L. 1913; re-en. Sec. 1259, R. C. M. 1921.

Collateral References

Schools and School Districts 164.
79 C.J.S. Schools and School Districts 485.

(1260) Support from general school fund—buildings and equipment. The trustees of any district are hereby empowered to use moneys from the general school fund of the district for the maintenance of manual and industrial schools and courses the same as for other school purposes; provided, that the state treasurer shall pay annually from any funds in his possession not otherwise appropriated ten dollars to each district for each person attending such manual and industrial courses for a period of six months or more yearly; provided, further, that the state treasury shall likewise pay annually to any county high school which maintains a manual training department, from any funds in the state treasury, not otherwise appropriated, the sum of ten dollars for each child or student attending the manual training department in such county high school for a period of six months or longer yearly. Buildings and furnishings and equipment for manual and industrial training shall be provided in the same manner as now prescribed for the erection and furnishing of buildings for other school purposes.

History: En. Sec. 4, Ch. 131, L. 1911; re-en. Sec. 1700, Ch. 76, L. 1913; re-en. Sec. 1260, R. C. M. 1921. Collateral References

Schools and School Districts = 19(1), 75.
78 C.J.S. Schools and School Districts §§ 21, 265.

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75-4007. (1261) Penalty for schools not complying with this act. To secure an efficient administration of this act, the state board of education shall determine whether such manual and industrial schools and courses meet the provisions of this law. Such schools as do not meet the provisions of this act shall not be entitled to state aid until all defects are remedied.

History: En. Sec. 5, Ch. 131, L. 1911; re-en. Sec. 1700, Ch. 76, L. 1913; re-en. Sec. 1261, R. C. M. 1921.

75-4139. 75-4140.

75-4141.

75-4142.

## CHAPTER 41

## HIGH SCHOOLS—COUNTY—JUNIOR AND DISTRICT— JOINT SCHOOL SYSTEMS

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75-4101. (1262.1) High schools defined. A high school is a public school as defined in the general school laws and is an integral unit of the public school system which comprises some one or more of the grades of schoolwork intermediate between the elementary schools and the institutions of higher education of the state of Montana, and which has its own administrative head and corps of teachers under the direct supervision either of a district superintendent and the board of trustees of a school district, or of a county high school principal and board of trustees of such county high school, as the case may be.

Types of public high schools are defined and designated as follows:

- 1. A junior high school is a public school as defined in the general school laws and is an integral unit of the public school system which comprises what is ordinarily designated as the work of the seventh, eighth, and ninth grades of the school system under the supervision of the district superintendent and board of trustees of the school district, and subject to the regulations and approval of the state board of education and the state superintendent of public instruction.
- 2. A senior high school is a public school as defined in the general school laws and is an integral unit of the public school system which comprises what is ordinarily designated as the work of the tenth, eleventh, and twelfth grades of the school system, under the supervision of the district superintendent and board of trustees of the school district, or of the county high school principal and county high school board, and subject to the regulations and approval of the state board of education and the state superintendent of public instruction.
- 3. A six-year high school is a public school as defined in the general school laws and is an integral unit of the public school system which comprises what is ordinarily designated as the work of grades seven through twelve inclusive of the school system under the supervision of the district superintendent and board of trustees of the school, and subject to the regulations and approval of the state board of education and the state superintendent of public instruction.
- 4. A regular four-year high school is a public school as defined in the general school laws and is an integral unit of the public school system which comprises what is ordinarily designated as the work of grades nine through twelve, inclusive, of the school system under the supervision of the district superintendent and board of trustees of the school, or of the county high school principal and county high school board, and subject

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to the regulations and approval of the state board of education and the state superintendent of public instruction.

History: En. Sec. 1, Ch. 148, L. 1931; amd. Sec. 1, Ch. 250, L. 1957.

Smith, 91 M 419, 427, 8 P 2d 800; McBride v. Reardon, 105 M 96, 99, 69 P 2d 975.

#### References

Young v. Board of Trustees, 90 M 576, 580, 4 P 2d 725; State v. Board of Trustees, 91 M 300, 303 et seq., 7 P 2d 543; Missoula County Free High School v.

#### Collateral References

Schools and School Districts 11. 78 C.J.S. Schools and School Districts 13.

## 75-4102. (1262.2) Repealed—Chapter 250, Laws of 1957.

This section (Sec. 2, Ch. 148, L. 1931), defining junior high school, was repealed

by Sec. 3, Ch. 250, Laws 1957. For new provision see 75-4101.

75-4103. (1262.3) Board of trustees of county high schools. Every county high school shall be under the general supervision and control of a board of trustees consisting of seven members, one of whom shall be the county superintendent of schools of the county wherein such county high school is located, and six of whom shall be appointed by the board of county commissioners of the said county. Provided, however, whenever the county commissioners receive a petition signed by fifteen per cent of the qualified electors in the county high school district requesting the election, the county commissioners of the county shall within not less than thirty days nor more than sixty days thereafter, submit to the electors in the county high school district the following question:

Shall the board of trustees of the county high school district be elected?

☐ For the election of trustees.

☐ Against the election of trustees.

If a majority of all of the votes cast be in favor of electing a board of trustees, then the provisions of sections 75-4104 and 75-4105, shall no longer be applicable, but the following sections shall apply:

Four of the trustees to be elected shall come from the elementary school district in which the county high school is located, and the county commissioners and the county superintendent of schools shall immediately district the remaining portion of the county high school district into three trustee districts, and each district shall be entitled to one member on the county high school board.

The election of seven school trustees of the county high school shall be held on the first Saturday in April of every year to fill the expired terms of trustees, and the term of office of trustees after the first election of the county high school board shall be for three years. However, at the first election, four of the trustees elected shall be residents of the elementary school district where the high school is situated and three of the trustees elected shall be residents of the respective trustee districts set up by the board of county commissioners and the county superintendent of schools.

At the first election the four trustees elected from the elementary school district where the high school is located shall cast lots to determine which two shall hold office for one year, which one for two years and which one for three years. The three trustees elected from the trustee districts set up by the board of county commissioners and the county superintendents of schools shall cast lots to determine which one shall hold office for one year, which one for two years and which one for three years.

The procedure for calling and holding elections, and for the assumption of office, for first class school districts, set forth in sections 75-1607 through 75-1613, shall govern the elections provided for in this act, the words "clerk of the district and county superintendent of schools" being synonymous with "the county clerk and recorder" when the former is used in the sections referred to, and the words "board of trustees" being synonymous with the words "county commissioners," if a majority of all the votes cast be in favor of electing a board of trustees of the county high school. Upon the election and qualification for office as hereinbefore set forth of all seven of the elected trustees, the county superintendent of schools shall no longer be a member of the board of trustees.

Any twenty-five electors qualified to vote in the election, shall file with the county clerk and recorder of the county, the nominations of as many persons as are to be elected to the county high school board at the elections herein provided for, at least twenty days preceding the election. The county clerk and recorder shall cause the names to be printed on a ballot not inconsistent with the provisions of the law relating to the election of other candidates.

Every citizen of the United States of the age of twenty-one years or over who has resided in the state of Montana for one year, and thirty days in the elementary school district or the trustee district as designated above, next preceding the election, shall be eligible for the office of school trustee and entitled to vote thereat.

Absence from the school district or trustee district for sixty consecutive days, or failure to attend three consecutive meetings of the board of trustees without good cause, shall constitute a vacancy in the office of trustee. When a vacancy occurs in the county high school board from any cause whatever, the fact shall be immediately certified by the secretary of the high school board to the board of trustees of the high school who shall immediately appoint, in writing, a qualified person, resident of the school or trustee district where the vacancy occurs and who shall serve until the next election as stated herein. At the next election, a new trustee shall be elected to fill the unexpired portion of the vacated term, from the district in which the vacancy occurs.

History: En. Sec. 3, Ch. 148, L. 1931; amd. Sec. 1, Ch. 278, L. 1959.

78 C.J.S. Schools and School Districts § 92.

47 Am. Jur. 316, Schools, §§ 29 et seq.

Collateral References

Schools and School Districts 48(1).

75-4104. (1262.4) Appointment and term of county high school trustees. The county superintendent of schools shall be a member of the board of

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county high school trustees of her county throughout her term of office as county superintendent. Save as hereinafter provided the terms of office of the trustees of any county high school, appointed by the board of county commissioners, shall begin on the first Monday in January following their appointment and shall be for two years thereafter. The board of county commissioners annually at their December meeting shall make the appointments for the terms commencing with the first Monday in January next ensuing, provided that if more than three such terms are to commence at the same time three only of the appointments made shall be for the term of two years, and shall be by the board of county commissioners specifically so designated upon their minutes, the remaining appointments to be for the term of one year and to be designated as such in like fashion by the board upon its minutes. In all cases, however, the members of the board of county high school trustees shall serve and hold office until their successors are appointed and qualified. Not more than three members of any board of county high school trustees, appointed by the board of county commissioners, shall at the time of their appointment or during their terms of office reside outside of the school district in which the county high school is located; and not more than two trustees residing outside of such school district shall be appointed to the county high school board of trustees in the same year.

History: En. Sec. 4, Ch. 148, L. 1931. 78 C.J.S. Schools and School Districts  $\S\S$  93, 96.

Schools and School Districts 48(2, 3).

Schools and School Districts 48(3).

75-4105. (1262.5) Vacancies. Whenever a vacancy occurs in any board of county high school trustees, from any cause whatever, the secretary of the board shall immediately certify such vacancy to the board of county commissioners of the county, which shall forthwith fill such vacancy by an appointment for the remainder of the term in which the vacancy exists and until a successor shall be appointed and qualified.

History: En. Sec. 5, Ch. 148, L. 1931. 78 C.J.S. Schools and School Districts § 96 et seq.

75-4106. (1262.6) Meetings of county high school boards of trustees—quorum—contracts. The board of trustees of every county high school shall hold four regular meetings annually on a day fixed by the board in the months of April, July, October, and January, and such special meetings not exceeding two (2) in any one (1) calendar month, as may be necessary. All meetings shall be held at the place where the county high school is located. The provisions of the general school law of Montana as to call and notice of special meetings of the boards of trustees of school districts shall govern the special meetings of all boards of trustees of county high schools. At any general or special meeting a majority of all the members of the board shall constitute a quorum for the transaction of any business except the letting and execution of contracts. No contract shall be let or executed by any board of trustees of any county high school save by a majority

vote of all the members of the board at a regular meeting, or at a special meeting, duly called, noticed and convened.

History: En. Sec. 6, Ch. 148, L. 1931.

78 C.J.S. Schools and School Districts \$\ 99, 270.

Schools and School Districts 48(6), 79.

75-4107. (1262.7) Officers of boards of trustees of county high schools. At the regular meeting in January of the board of trustees of every county high school there shall be chosen annually from among the members of the board a president, vice-president and secretary who shall hold office until the next regular meeting in January of the year ensuing and until their successors have been chosen and qualified. Every such board of trustees shall have authority to make all necessary rules for its government and the orderly conduct of its business, not, however, in anywise inconsistent with the law. The treasurer of the county wherein a county high school is located shall be the treasurer of the board of trustees of such county high school and the custodian of all funds of the said board and of all moneys belonging to such county high school or available for county high school purposes.

History: En. Sec. 7, Ch. 148, L. 1931.

75-4108. (1262.8) Compensation of members of boards of trustees of county high schools. A member of the board of trustees of a county high school is entitled to all mileage in attending the meetings of the board at a rate of not to exceed seven cents (7c) per mile for every mile necessarily traveled from his place of residence to the place where the high school is located, and return, such mileage to be allowed by the board and paid by its warrant drawn against any moneys in the hands of the county treasurer, belonging to the county high school and not otherwise appropriated. The members of the board shall receive no compensation for their services as trustees.

History: En. Sec. 8, Ch. 148, L. 1931; amd. Sec. 4, Ch. 16, L. 1933.

Collateral References

Schools and School Districts \$\infty\$48(5).
78 C.J.S. Schools and School Districts

75-4109. (1262.9) Compensation of secretaries of boards of trustees of county high schools. Every board of trustees of a county high school may allow and pay the secretary of the board such reasonable compensation for his services as secretary of the board may fix, payment to be made at stated intervals in the discretion of the board from any funds in the hands of the county treasurer belonging to the county high school and not otherwise appropriated, but only upon the warrant of the board drawn as in other cases. The fact that the secretary is also a trustee and a member of the board shall not bar him from receiving the compensation herein provided for.

History: En. Sec. 9, Ch. 148, L. 1931.

75-4110. (1262.10) Principal, authority of. The principal of any county high school, with the consent and approval of the board of trustees, may make such rules and regulations as he may deem proper and suitable con-

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cerning the courses of study, the conduct and government of the pupils attending the county high school, and the general administration of such schools; providing nothing herein shall be construed as permitting the adoption of rules and regulations which shall be in conflict with the rules and regulations promulgated by the state board of education.

History: En. Sec. 10, Ch. 148, L. 1931.

Collateral References

Schools and School Districts 147. 78 C.J.S. Schools and School Districts 237.

75-4111. (1262.11) Pupils, suspension and expulsion of. Any pupil willfully refusing to obey any such rule or regulation, or persistently failing to conform thereto, may be suspended by the principal forthwith, and, after reasonable notice and an opportunity to appear and be heard, expelled by the board of trustees from the county high school.

History: En. Sec. 11, Ch. 148, L. 1931.

## Collateral References

Schools and School Districts = 169.
79 C.J.S. Schools and School Districts \$503.

Pupils; admission, attendance, discipline, and punishment. 47 Am. Jur. 403, Schools, §§ 146 et seq.

Validity of regulation by school authorities as to clothes of pupils. 18 ALR 649 and 30 ALR 1216.

Regulations forbidding pupils to leave school grounds during school hours. 32 ALR 1342 and 48 ALR 659.

Right to discipline pupil for conduct away from school grounds, 41 ALR 1312. Marriage or other domestic relations as ground for exclusion of pupil from public school. 63 ALR 1164.

Power of legislature or school authorities to prescribe and enforce oath of allegiance, salute to flag, or other ritual of

a patriotic character. 147 ALR 698.

75-4112. (1262.12) Bond issues, submission to electors of question. If in any county maintaining a county high school in which no district high school is maintained not less than twenty per centum (20%) of the registered voters who on the last completed assessment roll of the county were assessed in their own names on real or personal property in the county shall present to the board of trustees of the county high school a petition asking that there be submitted the question whether bonds of the county shall be issued for the purchase or erection of a high school building or buildings and/or for the repairing, remodeling, or enlarging thereof, and/or for the purchase of equipment thereof, and/or for the purchase, erection and/or equipment of a high school dormitory or dormitories, or gymnasium, and/or for the purchase of a suitable site or sites for such buildings, or any of them, and/or to retire or refund any outstanding bonds issued for any of the purposes foregoing, and if such petition shall specify therein the amount of the bonds to be issued, and if the board of trustees of the county high school shall upon the presentation to it of the said petition, approve the same, and the issuance of bonds of the county to the amount therein mentioned and for the purpose or purposes therein specified, the secretary of the said board shall forthwith in the name of the board of trustees request the board of county commissioners of the county to submit without delay to the registered voters of such county the question whether bonds of the

History: En. Sec. 12, Ch. 148, L. 1931.

poses in the petition set forth.

Collateral References
Schools and School Districts 97(4).

county shall be issued and sold to the amount and for the purpose or pur-

79 C.J.S. Schools and School Districts § 366.

43 Am. Jur., Public Securities and Obligations, p. 309, §§ 52 et seq.; p. 356, §§ 106 et seq.

Power and discretion of officer or board authorized to issue bonds of governmental unit as regards terms or conditions to be included therein. 119 ALR 190.

Particular purposes within contemplation of statute authorizing issuance of bonds or use of funds by school district for specified purposes. 124 ALR 883.

75-4113. (1262.13) Duty of board of county commissioners. Immediately upon the receipt of any such request it shall be the duty of the board of county commissioners to submit such question to the registered and qualified electors of the county in the manner otherwise provided by law for the submission of the question of the issuance of other county bonds. If a majority of the registered and qualified electors of the county, voting upon the question so submitted, shall approve such issue, then the board of county commissioners shall forthwith issue and market the bonds authorized as in the case of other county bonds.

History: En. Sec. 13, Ch. 148, L. 1931.

## Collateral References

Schools and School Districts 97(4).
79 C.J.S. Schools and School Districts
8366.

# 75-4114. (1262.14) Repealed—Chapter 83, Laws of 1951.

Repeal

This section (Sec. 14, Ch. 148, L. 1931; Sec. 1, Ch. 75, L. 1939), relating to the bond limit for high schools, was repealed by Sec. 1, Ch. 83, Laws 1951.

75-4115. Validation of county bonds issued for high school buildings and dormitories. That any election heretofore held for the purpose of authorizing the board of county commissioners of any county of the state of Montana to issue bonds of the county for the purchase or erection of a high school building or buildings and for the purchase or erection of a high school dormitory or dormitories under the provisions of Chapter 117, Revised Codes of Montana, 1935, which election was held after notice stating the time and places of holding the election, the amount and character of the bonds proposed to be issued, and the purposes thereof was duly published and posted for the time and in the manner required by section 16-2024, and at which election the proposal to issue such bonds received a majority of all votes tendered and votes cast at such election upon such proposition, and the issuance of which any such board has assumed to authorize are hereby ratified and confirmed, and declared to be valid and subsisting obligations of full force and effect and to all intents and purposes, and all such bonds, whether issued or hereafter to be issued, are legalized and declared to be valid and legal and subsisting obligations of and against the county issuing the same, regardless of any error, defect, omission, irregularity, or departure from statute in the holding or conduct of such election or registration therefor, in the proceedings of the board of trustees of the county high school, in the form of the proposition submitted to the electors, or in any of the steps or proceedings relating to the issuance of such bonds, provided the issuance of such bonds was first submitted to the voters of said county and a majority of all the votes cast by such voters was in favor of such bond issue as declared by the minutes of the board of county commissioners or as otherwise made to appear with certainty, does not cause the indebtedness of the county to exceed any constitutional or statutory limitation of indebtedness.

History: En. Sec. 1, Ch. 110, L. 1937.

NOTE.—The election provisions of Ch. 117, referred to above, are included in this chapter.

(1262.15) County bond issue for county and district high In any county where a county high school and also one (1) or more accredited district high schools are maintained bonds of the county may likewise be issued in accordance with the provisions of this chapter and for any of the purposes aforesaid, the proceeds of such issue to be divided among the county high school and accredited district high school, or schools of the county. The question submitted to the electors of the county shall definitely state the amount which is to be allotted to the county high school and the amount which is to be apportioned to or among the accredited district high school, or schools; and in all such cases the amount allotted to the county high school and the amount to be apportioned among the accredited district high school or schools shall be computed upon the basis of the taxable valuation of the county high school district, and of all the accredited district high school districts of the county during the year preceding the submission of the question of the bond issue; provided, that in counties which have not been divided into high school districts, the distribution shall be computed upon the basis of the taxable valuation of the common school district in which the county high school is located, and the taxable valuation of all the common school districts maintaining district high schools in the county during the year preceding the submission of the question of the bond issue provided, further, that moneys apportioned to any high school district or common school district under this act, exclusive of the county high school, shall not be expended until the purpose for such expenditure has been approved by a vote of the people of the district at an election conducted in the same manner as the election to vote on extra taxes for school purposes.

History: En. Sec. 15, Ch. 148, L. 1931; amd. Sec. 1, Ch. 233, L. 1955.

#### Bond Issues to Match Federal Funds

This section does not apply where to require division of the proceeds would in effect destroy the purpose of Ch. 115, Laws 1937 (omitted) which is to enable the borrowing body to match federal funds, available only for the erection of build-

ings and public works, and where the district high schools are not in need of such improvements. Hendrickson v. Powell County, 112 M 1, 7, 112 P 2d 199.

### Collateral References

Schools and School Districts \$366.

75-4117. (1262.16) Payment of bonds. All bonds authorized and issued in accordance with this chapter shall be paid, both principal and interest, in the manner provided by law for the payment of other bonds of counties of the state.

History: En. Sec. 16, Ch. 148, L. 1931.

#### Collateral References

Schools and School Districts \$97(9). 79 C.J.S. Schools and School Districts \$374.

75-4118. (1262.17) Levies for maintenance—when prohibited. In all cases where bonds of the county are issued for county high school purposes

the board of trustees of the county high school shall not include in any budget of its requirements for the maintenance of the county high school any item of expense or disbursement for the purposes, or any of them, for which such county bonds are issued.

History: En. Sec. 17, Ch. 148, L. 1931.

## Collateral References

Schools and School Districts 103(4). 79 C.J.S. Schools and School Districts 383.

75-4119. (1262.18) Repealed—Chapter 189, Laws of 1951.

Repeal

This section (Sec. 18, Ch. 148, L. 1931), relating to the payment of transportation

and quarters for high school students, was repealed by Sec. 9, Ch. 189, Laws 1951.

**75-4120.** (1262.19) **Authority to abolish.** Any county in which a county high school has been established may abolish such county high school and dispose of all property belonging thereto in the manner provided in this chapter.

History: En. Sec. 19, Ch. 148, L. 1931.

#### Collateral References

Schools and School Districts ≈11. 78 C.J.S. Schools and School Districts § 13.

75-4121. (1262.20) Petition to be filed. Between the first day of July and the first day of September in any year in which a general election is held in the state of Montana twenty per centum (20%) or more, of the qualified electors of any county maintaining a county high school who are also assessed in their own names on the assessment books of the county for that year upon real or personal property may file their written petition with the county clerk of the county praying that the county high school be abolished.

History: En. Sec. 20, Ch. 148, L. 1931.

75-4122. (1262.21) Commissioners to submit question. At the first regular monthly meeting of the board of county commissioners of the county immediately following such filing the petition shall be called to the attention of the board by the county clerk; and the board shall immediately direct the submission to the registered voters of the county at the ensuing general election for that year of the question whether the county high school of the county shall be abolished.

History: En. Sec. 21, Ch. 148, L. 1931.

75-4123. (1262.22) Publication of notice. The county clerk of the county shall publish a notice of the filing and purpose of the said petition and that the question of abolishing the county high school in the county will be submitted at the ensuing general election, at least once a week for four successive weeks in some newspaper of general circulation published in the county, and, if there be none, in such newspaper as the board of county commissioners may designate, the first publication of such notice to be made between September 1 and September 15 of the said year.

History: En. Sec. 22, Ch. 148, L. 1931.

75-4124. (1262.23) Further notice required—manner of holding election—ballots. Further notice of the submission of the question shall be given, and such question shall be submitted to the registered voters of the county at the ensuing general election in November, and the votes cast thereon canvassed and returns thereof made in the manner provided by law for the election of county officers at that election, subject, however, to the following special requirements:

The votes for or against the abolishment of the county high school shall be cast by ballot which shall be in substantially the following form:

☐ For the abolishment of the county high school.☐ Against the abolishment of the county high school.

An elector may vote for abolishing the county high school by placing an "X" in the square immediately before the words "For the abolishment of the county high school"; and a ballot so marked and cast shall be counted in favor of abolishing the county high school. An elector may vote against the abolishment of the county high school by placing an "X" in the square immediately preceding the words "Against the abolishment of the county high school"; and a ballot so marked and cast shall be counted against abolishing the county high school.

History: En. Sec. 23, Ch. 148, L. 1931.

75-4125. (1262.24) Action by board of county commissioners when election favors abolishing high school. If a majority of all the votes cast at such general election upon the question of the abolishment of the county high school shall be in favor of abolishing the same the board of county commissioners of the county at its first regular meeting in December following shall make and enter at large upon its minutes an abstract of the votes so cast and a resolution that in accordance therewith on and after July 1st of the year immediately following the county high school of the county shall be, and is thereby abolished.

History: En. Sec. 24, Ch. 148, L. 1931.

75-4126. (1262.25) When election favors retaining high school. But if a majority of all the votes cast at such election shall be against the abolishment of the county high school a similar abstract of the votes shall in like manner be entered by the board of county commissioners at large upon their minutes at its December meeting aforesaid; and no further submission of the question of abolishing the county high school shall be had in that county for a least four years thereafter, provided that if an election against the abolishment of the county high school has been had within any county within two years prior to the enactment of this statute, that the question shall not again be resubmitted for at least four years after the date that this act becomes effective.

History: En. Sec. 25, Ch. 148, L. 1931.

75-4127. (1262.26) Disposition of unexpended funds of county high school after abolishment. When any county high school is abolished pursuant to law all unexpended moneys belonging to such high school shall be applied and paid as follows:

- 1. To the payment of outstanding warrants issued by the board of trustees of the county high school.
- 2. To the payment of the interest and principal of outstanding bonds issued for county high school purposes.
- 3. To the credit of the funds of the school districts of the county which maintain and conduct accredited high school classes, the apportionment among such districts to be made according to the average daily attendance as determined by the county superintendent of schools at such accredited high school classes for the school year immediately next preceding the effective date of the abolishment of the county high school. But if the school district in which the county high school was located shall establish an approved high school, or approved high school classes, for the school year immediately following upon the effective date of the abolishment of the county high school such school district shall share in the distribution of any unexpended balance of the funds of the county high school upon the basis of the average daily attendance at the county high school in approved high school classes during the last school year of its existence.

History: En. Sec. 26, Ch. 148, L. 1931.

(1262.27) Disposition of property of county high school when abolished—inventory—appraisal—compensation of appraisers. When any county high school is abolished all its real and personal property, other than its moneys, shall be disposed of in the following manner: The district court of the county in which such high school was located on application of the board of county commissioners shall appoint three competent persons, residents of the county, to inventory and appraise all such real and personal property of the said county high school. In making such appraisement the appraisers shall take into account ordinary depreciation, and the adaptability or lack of adaptability of the buildings, grounds, and other real estate, and of the various articles of personal property to any special use for which such property may be sold. The appraisers shall be allowed their necessary expenses, including mileage at the rate of ten (10) cents per mile from their respective residences to the place where the property of the county high school is found, and return, expenses and mileage to be paid out of any moneys belonging to the county high school, or, if none, out of the general fund of the county, upon the order of the district court.

History: En. Sec. 27, Ch. 148, L. 1931.

75-4129. (1262.28) Return of inventory and appraisement. The appraisers shall make and return their inventory and appraisement to the board of county commissioners of the county, and file the same with the county clerk, within thirty (30) days of the date of their appointment, accompanied by their several oaths that they have inventoried the property belonging to the said county high school honestly and have appraised the same fairly and impartially. Upon the filing of such inventory and appraisement the court shall fix a day for the hearing thereof of not less than ten (10) nor more than fifteen (15) days, and upon such hearing any person interested therein may appear and object thereto or show cause why the same should not be approved, and upon the hearing thereof the court shall

make an order either approving or refusing to adopt the said appraisement. If the report of the appraisers shall not be approved, the court may appoint a new board of appraisers who shall make a reappraisement of the property. The appraisers shall not be paid on account of their expenses and mileage until the order of the court above provided for shall have been made.

History: En. Sec. 28, Ch. 148, L. 1931.

75-4130. (1262.29) Board of county commissioners to sell—manner of sale—execution of deeds. Upon the adoption or approval of the appraisement the board of county commissioners of the county shall proceed to sell all of such property after notice and in the manner provided by law for the sale by the board of other county property; and upon any such sale of all or any portion of such property pursuant to law and the payment to the county treasurer of the purchase price the said board shall be fully authorized and empowered to make and execute in the name of the county all necessary and appropriate deeds, bills of sale and other instruments for the conveyance of title to the purchaser or purchasers.

History: En. Sec. 29, Ch. 148, L. 1931.

75-4131. (1262.30) Sales at less than appraised value. No sale of any parcel or item of such property shall be made for less than the appraised value. Preference shall be given to the board of trustees of any school district or of any county high school in the sale by the board of county commissioners of any such property, all or any part of which may at any time be sold and the necessary instruments of conveyance executed to any such board at private sale at a purchase price equivalent to the highest bid offered for said property, provided such bid shall not be for less than the appraised value thereof. If the sale of the said property shall not for any reason be concluded as provided herein, the court at any time within one (1) year from the making of the order adopting the appraisement upon the petition of either the board of trustees of the school district or the county high school may order the said property to be reappraised and appoint a board of appraisers therefor.

History: En. Sec. 30, Ch. 148, L. 1931.

75-4132. (1262.31) Proceeds of sale—disposition. All moneys received by the board of county commissioners from the sale of property of the county high school shall be paid over to the county treasurer of the county and by him deposited to the credit of the county high school fund and thereafter disbursed in the manner otherwise provided for the disbursement of the unexpended moneys of a county high school which has been abolished.

History: En. Sec. 31, Ch. 148, L. 1931.

Collateral References

Schools and School Districts ← 11, 17. 78 C.J.S. Schools and School Districts §§ 13, 18.

75-4133. (1262.32) Disposition of taxes levied for county high school but unpaid before abolishment. All taxes levied for the support of any county high school which is thereafter abolished before such taxes are collected shall, when collected, be paid over into the fund created by the special high school tax levied in the county, and apportioned and disbursed

as a part of such fund, and, if there be no such fund, then into the general school fund of the county.

History: En. Sec. 32, Ch. 148, L. 1931.

#### Collateral References

Schools and School Districts 110.
79 C.J.S. Schools and School Districts \$\\$ 400, 411.

(1262.33) Liquidation of indebtedness of county high school upon abolishment. If the funds of any county high school which has been abolished, and the proceeds of the sale of all its property according to law, are not sufficient to pay all the outstanding warrants, bonds and other legal obligations of the said high school, it shall be the duty of the county commissioners and of the board of trustees of the said high school annually to ascertain the amount of such warrants, bonds and other outstanding indebtedness and to make such annual tax levies according to law as may be necessary to pay and retire such warrants, bonds and/or other outstanding obligations, all in the same manner and by the same means as though the said county high school had not been abolished; and for such purpose and until such indebtedness be fully paid and discharged the board of trustees of the said county high school shall be continued in existence and shall function, and together with the board of commissioners of the county shall exercise and have the same powers for retiring and paying such indebtedness as though the said county high school were still functioning and in existence.

History: En. Sec. 33, Ch. 148, L. 1931.

75-4135. (1262.34) School bonds validated. All bonds which have been heretofore issued by the board of trustees of any county high school, or the issuance of which any such board has assumed to authorize, are hereby ratified and confirmed and declared to be valid and subsisting legal obligations of full force and effect, provided that the question of the issuance of such bonds was first submitted to the voters of the county and a majority of all the votes cast by such voters was in favor of such bond issue as declared by the minutes of the said board of trustees, or as otherwise made to appear with certainty.

History: En. Sec. 34, Ch. 148, L. 1931.

## Collateral References

Schools and School Districts \$97(7).
79 C.J.S. Schools and School Districts \$371 et seq.

75-4136. (1262.35) Validation of the establishment and location of county high schools. All acts and things of any nature whatsoever heretofore done, and all proceedings heretofore had, by any board of county commissioners of any county in the state relative to the submission to the electors of the county of the question of establishing and locating a county high school, and to the establishment and location of any such high school, where such question was in fact submitted to the voters of the county and a majority of all votes cast by the voters was in favor of the establishment and location of a county high school as declared by the minutes of the board of county commissioners, or as otherwise made to appear with cer-

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tainty, are hereby ratified and confirmed and declared to be valid and of full force and effect.

History: En. Sec. 35, Ch. 148, L. 1931.

#### Collateral References

Schools and School Districts \$\infty\$ 13.

75-4137. (1262.36) Validation of prior acts. All acts and things of any kind whatsoever done, or proceedings had, by any board of trustees of any county high school, or by any board of county commissioners of any county, prior hereto and under the provisions of the acts of March 3, 1899, for the establishment of county free high schools, or under the further acts of March 14, 1901, amending certain sections of the act aforesaid of March 3, 1899, or under any other act of the legislative assembly relating to the establishment of county free high schools or for their maintenance, support or administration are hereby ratified and confirmed and declared to be valid and of full force and effect.

History: En. Sec. 36, Ch. 148, L. 1931.

### Collateral References

Schools and School Districts \$\infty 48(6)\$. 78 C.J.S. Schools and School Districts \$99.

75-4138. (1262.37) School districts may establish high schools—transportation. Whenever the interests of any school district require it, the board of trustees of the district, with the approval of the superintendent of public instruction, may establish a high school and make the necessary provisions for its quarters, equipment, and teaching force in the manner provided for in section 75-4139, provided, that the transportation and payment of tuition, or the payment of board, room and tuition for the high school students of the district for the purpose of attending a high school in another district, shall be in lieu and the equivalent of establishing a high school and making the necessary provisions for its quarters, equipment, and teaching force, provided further that the total amount of transportation paid to any high school student from all sources shall not exceed the maximum amount as stipulated in section 1010 of the Revised Codes of Montana, 1935.

History: En. Sec. 37, Ch. 148, L. 1931; amd. Sec. 1, Ch. 159, L. 1939.

References

Box v. Duncan, 98 M 216, 38 P 2d 986.

NOTE.—Section 1010, referred to above, was repealed by Sec. 15, Ch. 152, Laws 1941.

75-4139. (1262.38) Approval of superintendent of public instruction—how secured. When the board of trustees of any school district desires to establish a high school it shall petition the superintendent of public instruction, prior to June first of the current year for the permission to do so, setting forth in writing the facts regarding the enrollment in the elementary grades, the distance to other high schools, the road conditions, the taxable valuation of the district, the building facilities and such other information as the state superintendent may require. An investigation shall be made thereafter by a designated representative of the superintendent of public instruction and his report on the petition filed with it before the

petition is acted upon. The superintendent of public instruction must have passed favorably on any such petition before the high school proposed may be established by the district.

When the establishment of a high school has been approved in accordance with the provisions of this section, the county superintendent of schools shall immediately investigate to find the number of students who will probably attend such newly established high school. This number of students shall be used as a basis for making out the budget for the first year of operation. He shall then assist the board of trustees of the school district establishing such high school, in preparing and submitting a budget for the maintenance of such high school. Said budget shall, otherwise than specified above, be prepared, submitted, approved and distributed in the same manner as other high school budgets are prepared, submitted, approved and distributed.

History: En. Sec. 38, Ch. 148, L. 1931; amd. Sec. 1, Ch. 9, L. 1933.

## Mandamus to Accredit High School

Court erred in granting writ of mandate to compel state board of education to accredit school as three-year high school before obtaining approval of superintendent of public instruction under this section and state board rule, in the absence of authority of board of trustees or prior legal demand upon state board to accredit the school. State ex rel. School District No. 29 v. Cooney, 102 M 521, 529, 59 P 2d 48.

75-4140. (1262.39) District superintendent of schools. The board of trustees of any school district may appoint a superintendent of schools for a term not to exceed three years. After his second successive election, his contract shall thereafter be deemed renewed for a further term of one (1) year, and successively thereafter for like terms of one (1) year each, unless the board of trustees shall by majority vote of its members give written notice to such superintendent on or before the first day of February of the last year of his current term that his services will not be required after the expiration of his existing contract.

History: En. Sec. 39, Ch. 148, L. 1931; amd. Sec. 1, Ch. 66, L. 1943.

### Hearing on Removal

A district school superintendent appointed under this section by the board of school trustees, occupies a different position from that of a teacher employed under section 75-1632; he is the executive officer of the board and as such a public officer, and while there is no statutory provision requiring a hearing before removal, there is a well-defined public policy declared by decisions of the supreme court that one in public office for a fixed term is entitled to such hearing to meet the demands of common justice and that only a legislative act will warrant a deviation from it. State ex rel. Howard v. Ireland, 114 M 488, 495, 138 P 2d 569, distinguished in 120 M 63, 75, 180 P 2d 472.

A hearing as to the fitness of a district

A hearing as to the fitness of a district school superintendent to act as such presupposes that charges were preferred, that notice had been given the incumbent to enable him to prepare for and refute the charges, that evidence was taken at the hearing with opportunity for cross-examination of the witnesses—all for the purpose of determining in a judicial manner the truth or falsity of the charges. State ex rel. Howard v. Ireland, 114 M 488, 495, 138 P 2d 569.

Where an order of a board of trustees dismissing a district school superintendent for cause was void because he had not been granted a hearing, which order on appeal to the county superintendent was reversed, whereupon the board appealed to the state superintendent of instruction who found in favor of the board, the action of the board and the decision of the state superintendent were void for want of jurisdiction. State ex rel. Howard v. Ireland, 114 M 488, 501, 138 P 2d 569.

## Collateral References

Schools and School Districts \$\infty\$=63.
78 C.J.S. Schools and School Districts \$ 127.

75-4141. (1262.40) Qualifications. No person shall be eligible for appointment as district superintendent of schools of any school district unless at the beginning of the term of his contract he be the holder of such teacher's certificate as the state board of education shall require; and any such district superintendent of schools who at any time during the term of his contract shall from any cause cease to be the holder of such teacher's certificate as the said state board of education may require shall thereupon be forthwith discharged by the board of trustees of the district, regardless of the unexpired term of his contract, and in no event shall receive compensation from the school district for any services rendered subsequent to the date of his ceasing to hold the required certificate.

History: En. Sec. 40, Ch. 148, L. 1931.

75-4142. (1262.41) Duties. The district superintendent shall have general supervision of all the schools of his district, including all high schools, both junior and senior, and all high school courses offered in any district school, but under the direction and control of the board of trustees. He shall be the executive officer of the board of trustees and shall perform such additional duties in connection with the school system of the district as the board of trustees may prescribe.

History: En. Sec. 41, Ch. 148, L. 1931.

75-4143. (1262.42) Certain employment prohibited. No district superintendent of schools shall engage in any work or activity which the board of trustees may deem in conflict with his duties and employment as such superintendent.

History: En. Sec. 42, Ch. 148, L. 1931.

75-4144. (1262.43) Selection of reference and library books. All reference and library books of the high school shall be selected by the district superintendent of schools with the approval of the board of trustees; but in districts where a district superintendent is not employed the principal of schools shall select such reference and library books likewise with the approval of the board.

History: En. Sec. 43, Ch. 148, L. 1931.

Collateral References

Schools and School Districts 76.
78 C.J.S. Schools and School Districts 269.

75-4145. (1262.44) Repealed—Chapter 189, Laws of 1951.

Repeal transportation of high school pupils, was This section (Sec. 44, Ch. 148, L. 1931; Sec. 1, Ch. 156, L. 1933), relating to the

75-4146. (1262.44-A) Expenditure of money for transportation of high school pupils. Whenever any eligible high school pupil has been authorized to attend a high school situated in a county in another state and which county adjoins the county in which such high school pupil resides, as provided in section 75-4230, the board of trustees of the county high school, if there be a county high school for the county in which the pupil resides, or if there be no such county high school then the board of trustees of the school district in which such pupil resides, may expend any moneys

belonging to the county high school, or school district, as the case may be, for the purpose of either paying for transportation of such pupil from the home of such pupil to the high school in the other state which is to be attended, or for board, rent or tuition for such pupil while actually attending such school, in the same manner and to the same extent as such money might be expended for transportation, board, rent or tuition of such pupil if permission were given for attending a high school in another district in the county in which the pupil resides in accordance with the provisions of section 75-4145.

History: En. Sec. 3, Ch. 217, L. 1939. NOTE.—Section 75-4145, referred to above, was repealed by Sec. 9, Ch. 189, Laws 1951.

## Collateral References

Schools and School Districts 159½.
79 C.J.S. Schools and School Districts 475 et seq.

75-4147. (1262.45) Junior high schools—authority to establish in district having no accredited high school. The board of trustees of any school district where no accredited high school is already established and maintained may establish one or more junior high schools in the district at any time in accordance with the sections immediately following and provide therefor quarters, buildings, building sites, equipment and a teaching force.

History: En. Sec. 45, Ch. 148, L. 1931.

### Collateral References

Schools and School Districts € 11.
78 C.J.S. Schools and School Districts 13.

75-4148. (1262.46) Petition—resolution of board—approval of superintendent of public instruction. Whenever the board of trustees of any school district which has no accredited high school, already established, shall receive a petition in writing from twenty per centum (20%), or more, of the registered voters of the district requesting that a junior high school or junior high schools be established, or shall itself resolve by resolution spread upon the minutes of the board that the establishment of a junior high school or junior high schools is in the best interests of the district, an application shall forthwith be made by the said board of trustees to the superintendent of public instruction, setting forth therein such facts and information as it may require and requesting its approval of the establishment of the junior high school or junior high schools in question.

History: En. Sec. 46, Ch. 148, L. 1931.

75-4149. (1262.47) Submission of question. If the establishment of a junior high school or junior high schools is approved by the superintendent of public instruction, the board of trustees of the school district shall immediately submit to the registered voters of the district the question whether a junior high school, or if the establishment of more than one such junior high school be contemplated, whether junior high schools shall be established in such district.

History: En. Sec. 47, Ch. 148, L. 1931.

75-4150. (1262.48) Application and submission of question when bonds are to be issued. If it is necessary for the district to issue bonds to provide

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quarters, buildings, building sites, and/or equipment for the proposed junior high school or junior high schools the application for the approval of the superintendent of public instruction, shall set forth the facts pertinent to such issue and the amount of bonds required for the purposes mentioned, or any of them. And in any such case if the establishment of the junior high school or junior high schools be approved by the superintendent of public instruction the question submitted by the board of trustees to the registered voters of the district shall be whether a junior high school, or, if the establishment of more than one junior high school be contemplated, whether junior high schools shall be established in the district and bonds in a specified amount issued to provide quarters, buildings, building sites and equipment, or for any one or more such purposes.

History: En. Sec. 48, Ch. 148, L. 1931. Collateral References 78 C.J.S. Schools and School Districts § 13; 79 C.J.S. Schools and School Districts § 366.

Schools and School Districts 11, 97(4).

75-4151. (1262.49) **Election.** The qualified electors of the district shall be entitled to vote upon any question submitted to them in accordance with this chapter at an election called, noticed, held, canvassed and returned in the manner provided by law for the submission in such district of the question of a bond issue for the purpose of building, enlarging, altering or acquiring by purchase a schoolhouse, of furnishing and equipping the same, and of purchasing the necessary lands therefor.

History: En. Sec. 49, Ch. 148, L. 1931. Collateral References 78 C.J.S. Schools and School Districts § 13; 79 C.J.S. Schools and School Districts § 366.

Schools and School Districts 11, 97(4).

75-4152. (1262.50) Duty of board if establishment of junior high school be approved. If a majority of the votes cast at any such election be in favor of the establishment of a junior high school or junior high schools the board of trustees of the district shall immediately establish and open the school or schools so authorized.

History: En. Sec. 50, Ch. 148, L. 1931.

75-4153. (1262.51) Issuance of bonds. If the issuance of bonds as specified in any question submitted be approved the board of trustees shall thereafter issue and market the bonds of the district within the limits of the amount specified in the question and in the same manner and pursuant to the provisions and limitations of law otherwise applicable in the case of the issuance of district bonds for the purpose of building, enlarging, repairing or acquiring by purchase a schoolhouse, in the said district, or furnishing and equipping the same, and of purchasing the necessary lands therefor.

History: En. Sec. 51, Ch. 148, L. 1931.

#### Collateral References

Schools and School Districts \$\sim 97(6)\$.

79 C.J.S. Schools and School Districts \$371.

## CHAPTER 42

## HIGH SCHOOLS—COUNTY—JUNIOR AND DISTRICT—JOINT SCHOOL SYSTEMS CONTINUED—VOCATIONAL EDUCATION

Section 75-4201. Junior high schools—how established where district high school is already established. 75-4202. Establishment in districts where county high school is located. 75-4203. Tuition to be paid by county high school board. 75-4204. Discontinuance. 75-4205. Attendance from without the district. 75-4206. Junior high school courses. 75-4207. Joint school board—when formed. 75-4208. Membership—organization—officers. 75-4209. Powers. 75-4210. Voting powers of members of joint boards. 75-4211. District superintendent and county high school principal—appointment. 75-4212. Qualifications—term—salary. 75-4213. Joint teachers—employment. 75-4214. Joint salaries—how paid. 75-4215. Existing contracts exempted. 75-4216. Controversies relative to division of joint expense—how decided. 75-4217. General school laws, when applicable to joint boards. 75-4218. High school supervisor. 75-4219. State board of education—duties. 75-4220. Courses of study. 75-4221. Textbooks. 75-4222. Architecture. 75-4223. Secret societies—prohibited. 75-4224. Duty and authority of boards of trustees. 75-4225. Authority of boards of trustees to 75-4226. Solicitation by others than pupils. Authority of boards of trustees to penalize. Violations hereof-penalty. 75-4227. 75-4228. High school attendance—what pupils entitled to attend. 75-4229. Repealed. 75-4230. Attendance outside of county of pupil's residence-transfer of apportionment. 75-4231. General powers and duties of boards of trustees. 75-4232. Fees. 75-4233. Consolidation. 75-4234. Establishment of part-time high schools and high school classes. 75-4235. Part-time high schools—purpose. 75-4236. Reimbursement for salaries of teachers of part-time high schools and high school classes. 75-4237. Night schools-establishment. 75-4238. Attendance. 75-4239. Maintenance. 75-4240. Administration. 75-4241. Acceptance of acts of Congress for promotion of vocational education.

> ings—power and duties—expenses.
> 75-4244. Co-operation of the state board of education with local boards of school trustees in vocational education.

> 75-4242. Rules and regulations to be adopted by the state board of education.

Advisory committee-composition-qualifications of members-meet-

Duties of superintendent of public instruction. Apportionment of funds for vocational education. State treasurer as custodian of moneys. 75-4245. 75-4246.

75-4247.

General school law-when applicable.

75-4243.

75-4201. (1262.52) Junior high schools—how established where district high school is already established. The board of trustees of any school district wherein an accredited high school is already established may, by resolution and in compliance with the rules and regulations of the superintendent of public instruction reorganize the school system of the district to provide for a junior high school or junior high schools as a part of such

system, without submitting the question to the qualified electors of the district. But nothing herein contained shall be construed to authorize any such board of trustees to issue bonds of the district or to incur indebtedness or to proceed in the establishment of a junior high school or junior high schools other than in accordance with its general powers elsewhere defined.

History: En. Sec. 52, Ch. 148, L. 1931.

75-4202. (1262.53) Establishment in districts where county high school is located. A junior high school or junior high schools may be established by the school district in which any county high school is located in the manner provided in section 75-4201, provided that the board of trustees of the county high school already located in the district shall by resolution consent thereto. A junior high school, or junior high schools, may also, in like manner, be established by the county high school, provided that the board of trustees of the school district, in which the county high school is located, shall by resolution consent thereto.

History: En. Sec. 53, Ch. 148, L. 1931; amd. Sec. 1, Ch. 89, L. 1949.

75-4203. (1262.54) Tuition to be paid by county high school board. (a) Whenever any junior high school is established by any school district in which a county high school is maintained, as provided in this chapter, the board of trustees of the county high school shall pay annually out of any funds of the county high school to the board of trustees of the school district maintaining the junior high school for every ninth grade pupil enrolled in such junior high school who would otherwise be eligible for admission to the county high school an amount as tuition equal to the average cost per pupil in average number belonging for the past completed school year.

(b) Whenever any junior high school is established by any county high school, as provided in this chapter, the board of trustees of the school district in which the county high school is situated, and any other board of trustees sending pupils to such junior high school, shall pay annually out of any funds of the district or districts to the board of trustees of the county high school maintaining said junior high school for every seventh and eighth grade pupil enrolled in such junior high school who would otherwise be eligible for admission to the elementary school or schools of the district or districts, an amount as tuition equal to the average cost per pupil in average number belonging for the past completed school year.

History: En. Sec. 54, Ch. 148, L. 1931; amd. Sec. 2, Ch. 89, L. 1949.

Collateral References
Schools and School Districts ≈ 87.
78 C.J.S. Schools and School Districts
§ 318.

75-4204. (1262.55) **Discontinuance**. Any junior high school now or hereafter established may be abolished by mutual consent of the board of trustees of the district and the board of trustees of the county high school which established such junior high school.

History: En. Sec. 55, Ch. 148, L. 1931; amd. Sec. 3, Ch. 89, L. 1949.

75-4205. (1262.56) Attendance from without the district. The attendance at any junior high school of elementary pupils residing without the school district by which such junior high school is established and maintained shall be governed and controlled by the laws otherwise applicable in such cases arising in the elementary schools, and particularly with reference to the transfer or payment of tuition and the method whereby such transfer may be authorized. Elementary pupils, as used in this section shall be such pupils as have not fully met the requirements for entrance into the ninth grade of an accredited high school.

History: En. Sec. 56, Ch. 148, L. 1931.

#### Collateral References

Schools and School Districts 154.
79 C.J.S. Schools and School Districts 450.

Constitutionality, construction, and effect of statutes in relation to admission of nonresident pupils to school privileges. 72 ALR 499 and 113 ALR 177.

75-4206. (1262.57) Junior high school courses. Wherever a junior high school is organized in any school system or a junior high school is established the administrative officer may combine subjects and include special courses as he may deem necessary or appropriate, providing such courses meet with the approval of the superintendent of public instruction. Admission to junior high school and junior high school courses shall be in accordance with the standards prescribed and the rules promulgated by the superintendent of public instruction.

History: En. Sec. 57, Ch. 148, L. 1931.

#### Collateral References

Schools and School Districts → 164.
79 C.J.S. Schools and School Districts
§ 485.

47 Am. Jur. 441, Schools, §§ 200 et seq.

Extent of legislative power with respect to attendance and curriculum in schools. 39 ALR 477 and 53 ALR 832.

Power and duty of school authorities to maintain kindergartens or specialized departments. 70 ALR 1313.

75-4207. (1262.58) Joint school board—when formed. Whenever the board of trustees of any county high school and the board of trustees of the school district in which such county high school is located shall deem it for the best interest of both school systems they may form a joint board for the purposes and with the jurisdiction in this chapter specified.

History: En. Sec. 58, Ch. 148, L. 1931.

## Collateral References

Schools and School Districts \$\infty 45, 48(1).

78 C.J.S. Schools and School Districts §§ 83, 92.

47 Am. Jur. 316, Schools, §§ 29 et seq.

75-4208. (1262.59) Membership—organization—officers. Every member of the board of trustees of the school district and of the board of trustees of the county high school shall be deemed a member of any joint board, formed as authorized by this chapter, and entitled to receive reasonable notice of and to participate in all meetings of such joint board without restriction save in voting which is otherwise specially provided for. At the first meeting of any joint board there shall be chosen from among the membership a chairman who shall preside at all meetings; the county superintendent of schools shall be the secretary by virtue of her office. The chairman of the joint board shall not by reason of that fact be disqualified

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from voting upon any question, provided, however, that he be otherwise qualified to vote as elsewhere specified.

History: En. Sec. 59, Ch. 148, L. 1931.

Collateral References

Schools and School Districts 48(6). 78 C.J.S. Schools and School Districts 99.

75-4209. (1262.60) Powers. Every joint school board, so formed, in addition to its power to employ a district superintendent and county high school principal and joint teachers for both school systems, as elsewhere authorized, shall have jurisdiction and control of all questions of joint administrative policy and of the apportionment of all items of joint expense between the school district and the county high school.

History: En. Sec. 60, Ch. 148, L. 1931.

(1262.61) Voting powers of members of joint boards. For the purpose of voting upon any question relative to the employment of a district superintendent and county high school principal, or to the employment of joint teachers, or of determining any question of joint administrative policy, or of apportioning any item of joint expense, the board of trustees of the school district and the board of trustees of the county high school shall each be entitled to the same number of votes at any meeting of the joint board. To this end the board of trustees of the county high school shall choose a number of its members equal to the number of the trustees of the school district which comprise its board. The county superintendent of schools shall not be one of the trustees so selected by the county high school board. The names of the trustees, so chosen by the county high school board, shall be given to the secretary of the joint board as the designated representatives of the board of trustees of the county high school who are entitled to vote at all meetings of the joint board. No other members of the board of trustees of the county high school than those so designated whose names have been filed with the secretary of the joint board shall be entitled to a vote save that the county superintendent of schools shall cast the deciding vote in any case where a tie continues after at least three successive ballots. At all meetings of the joint board every member of the board of trustees of the school district and every member of the board of trustees of the county high school who has been designated by it in the manner herein provided as one of its representatives for the purpose of voting shall be entitled to east one (1) vote upon every question submitted.

History: En. Sec. 61, Ch. 148, L. 1931.

75-4211. (1262.62) District superintendent and county high school principal—appointment. Every joint board formed as provided in this chapter shall employ some qualified person who shall supervise the administration of the county high school and of the public schools in the district wherein the county high school is located and who shall be known as the superintendent of district schools and principal of the county high school.

History: En. Sec. 62, Ch. 148, L. 1931.

Collateral References

Schools and School Districts ← 133.
78 C.J.S. Schools and School Districts § 99, 154.

75-4212. (1262.63) Qualifications — term — salary. Every person appointed to the position of superintendent of district schools and principal of the county high school shall have the qualifications required by law for administrator of grades included within the system. He shall be employed for a term not exceeding two (2) years and at a salary to be fixed by the joint board.

History: En. Sec. 63, Ch. 148, L. 1931.

#### Collateral References

Schools and School Districts \$\sim 127, 133. 78 C.J.S. Schools and School Districts \$\§ 99, 154.

75-4213. (1262.64) Joint teachers—employment. The joint board may employ such teachers as are necessary to teach the same special subjects offered in both schools such as home economics, the trades and industries, manual training, agriculture, music, art, penmanship, the commercial branches and the like.

History: En. Sec. 64, Ch. 148, L. 1931.

#### Collateral References

Schools and School Districts 133. 78 C.J.S. Schools and School Districts 187.

75-4214. (1262.65) Joint salaries—how paid. The salaries of the district superintendent and county high school principal and of those teachers who are employed to teach jointly in both schools shall be borne both by the school district and the county high school. The salary of the district superintendent and county high school principal shall be apportioned between the school district and the county high school in proportion to the number of teachers necessarily employed in either school system for its proper administration. The salary of every teacher, employed to teach jointly both in the district schools and county high school shall be apportioned between the two school systems in accordance with the number of classroom hours actually expended by the teacher in each of the school systems.

History: En. Sec. 65, Ch. 148, L. 1931.

#### Collateral References

Schools and School Districts \$\sim 144(5)\$. 78 C.J.S. Schools and School Districts \$\\$ 118, 228.

75-4215. (1262.66) Existing contracts exempted. Nothing contained in this chapter shall be construed to affect any existing contract for the employment of a county high school principal or of a district superintendent of schools; but wherever a joint board exists or is hereafter formed the separate contract either of the county high school principal or of the district superintendent shall not be renewed and no new contract shall be made with any person for either position separately save for such period of time as may be necessary to fill one position until the existing contract with the other office may expire.

History: En. Sec. 66, Ch. 148, L. 1931.

## Collateral References

Schools and School Districts \$\sim 192.

(1262.67) Controversies relative to division of joint expense— 75-4216. how decided. Whenever any controversy shall arise relative to the division of any item of joint expense between a school district and a county high school, which have formed a joint board, such controversy shall be decided by the vote of the joint board as in other cases; but an appeal from its decision may be taken within thirty days thereafter by either the board of trustees of the school district or of the county high school to the state superintendent of public instruction whose decision shall be final and conclusive.

78 C.J.S. Schools and School Districts History: En. Sec. 67, Ch. 148, L. 1931. \$ 318.

Collateral References

Schools and School Districts \$27.

(1262.68) General school laws, when applicable to joint boards. In all cases where specific provision is not made by law for the control or functioning of any joint board formed in accordance with this chapter it shall be guided by the general laws of the state relating to public schools in all its acts and in the transaction of its business, provided that no joint board shall have or exercise any power not specifically given to it as such by law.

78 C.J.S. Schools and School Districts History: En. Sec. 68, Ch. 148, L. 1931. § 99.

Collateral References

Schools and School Districts 48(6).

(1262.69) High school supervisor. The state superintendent of public instruction with the approval of the state board of education shall appoint one supervisor for the state, whose duty it shall be to inspect and supervise the work of the high schools of the state, including all junior high school courses and schools, and to report from time to time such information concerning the same as the state superintendent of public instruction may require. A high school supervisor shall have the qualifications required by law for a district superintendent of schools, and shall hold office for such term and at such salary as the state superintendent with the approval of the state board of education may fix. The salaries and expenses of such high school supervisor shall be paid out of the moneys appropriated for the support of the state department of public instruction.

History: En. Sec. 69, Ch. 148, L. 1931.

Collateral References

References

State ex rel. School District No. 29 v. Cooney, 102 M 521, 526, 59 P 2d 48.

Schools and School Districts 47. 78 C.J.S. Schools and School Districts

75-4219. (1262.70) State board of education—duties. The state board of education shall prescribe the standards for promotion from the elementary schools to the public junior and senior high schools of the state and shall likewise fix the standards of work for all public high schools and accredit such schools as attain and maintain the standards thus fixed.

History: En. Sec. 70, Ch. 148, L. 1931.

Collateral References

References

Schools and School Districts 164, 178. 79 C.J.S. Schools and School Districts State ex rel. School District No. 29 v. \$\$ 485, 506. Cooney, 102 M 521, 525, 59 P 2d 48.

75-4220. (1262.71) Courses of study. The state superintendent of public instruction shall prepare or cause to be prepared with the co-operation and approval of such educators as may be designated by the state board of education courses of study for all high schools of the state, including junior high schools and all junior and senior high school courses, and shall prescribe to what extent such courses of study shall be used.

History: En. Sec. 71, Ch. 148, L. 1931.

75-4221. (1262.72) **Textbooks.** The textbooks for all high schools, including junior high schools and all junior and senior high school courses, shall be selected by the district superintendent or the principal of the high school, in either case with the approval of the board of trustees.

History: En. Sec. 72, Ch. 148, L. 1931.

79 C.J.S. Schools and School Districts

Collateral References

47 Am. Jur. 443, Schools, §§ 202 et seq.

Schools and School Districts \$\$ 164.

75-4222. (1262.73) Architecture. No public schoolhouse which is intended or used in whole or in part as a junior or senior high school, or for any high school purpose, shall be erected, or enlarged at an expense which shall exceed five hundred dollars (\$500.00) until plans and specifications detailing the work involved shall have been approved by the state board of health and its approval endorsed in writing thereon; provided that in districts of the second and third classes any such plans and specifications shall also have the approval of the superintendent of public instruction endorsed thereon in like fashion. The plans and specifications submitted in accordance with this section shall detail the heating, lighting and ventilation systems of the building in question.

History: En. Sec. 73, Ch. 148, L. 1931.

78 C.J.S. Schools and School Districts § 256 et seq.

### Collateral References

Schools and School Districts 71.

75-4223. (1262.74) Secret societies—prohibited. It shall be unlawful for the pupils of any public high school or other elementary schools of this state to participate in or be members of any secret fraternity or secret organization whatsoever that is in any degree a school organization.

History: En. Sec. 74, Ch. 148, L. 1931.

### Cross-Reference

Secret fraternities prohibited in public schools, sec. 75-2802.

## Collateral References

Schools and School Districts € 169. 79 C.J.S. Schools and School Districts § 499.

Regulations as to school or college fraternity. 27 ALR 1074 and 134 ALR 1274.

75-4224. (1262.75) Duty and authority of boards of trustees. Every board of trustees of a school district or county high school is hereby required to enforce the provisions of this chapter and is hereby fully authorized and empowered to make and adopt all rules and regulations which in the judgment and discretion of any such board are necessary or appropriate to effect the intent and purpose of this chapter, and from time to time to modify, change or repeal any such rules or regulations so adopted.

History: En. Sec. 75, Ch. 148, L. 1931.

79 C.J.S. Schools and School Districts § 494.

Collateral References

Schools and School Districts 271.

(1262.76) Authority of boards of trustees to penalize. Every board of trustees of a school district or county high school is hereby further fully authorized and empowered pursuant to rules and regulations, so made and adopted by it, to suspend or dismiss any pupil attending any high school within its jurisdiction, or to deny to any such pupil the honors of graduation or of participating in school activities when after investigation the board of trustees having jurisdiction by at least two-thirds (2/3) vote of its members shall first have adjudged any such high school pupil guilty of a violation of any of the provisions relating to secret societies, or of any of the rules or regulations, adopted and in force as provided herein.

History: En. Sec. 76, Ch. 148, L. 1931. 79 C.J.S. Schools and School Districts § 503.

Collateral References

Schools and School Districts 173.

(1262.77) Solicitation by others than pupils. It shall be unlawful for any person to be upon the grounds or in or about any building of a public high school of which he is not a pupil for the purpose of soliciting any pupil of any public high school to join any secret society or organization which is prohibited by this chapter.

History: En. Sec. 77, Ch. 148, L. 1931.

79 C.J.S. Schools and School Districts § 499.

Collateral References

Schools and School Districts = 169.

(1262.78) Violations hereof—penalty. It shall be a misdemeanor to violate any provision of this chapter; and any person convicted thereof shall be punished by a fine of not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00) for every violation.

History: En. Sec. 78, Ch. 148, L. 1931.

79 C.J.S. Schools and School Districts § 512.

Collateral References

Schools and School Districts 173.

(1262.79) High school attendance—what pupils entitled to attend. Attendance at any accredited high school shall be free to all eligible high school pupils residing in the county wherein such accredited high school is located except for such fees as the board of trustees are otherwise specially authorized by law to exact.

History: En. Sec. 79, Ch. 148, L. 1931.

79 C.J.S. Schools and School Districts § 447.

Collateral References

Schools and School Districts 150.

#### 75-4229. (1262.80) Repealed—Chapter 106, Laws of 1951.

Repeal

outside county shall not be counted in This section (Sec. 80, Ch. 148, L. 1931), determining attendance, was repealed by providing that attendance at high school Sec. 1, Ch. 106, Laws 1951.

75-4230. (1262.81) Attendance outside of county of pupil's residence—transfer of apportionment. The attendance of any eligible high school pupil at an accredited high school outside of the county of his residence, either within or without the state, must be authorized by the county superintendent of schools of the county of his residence when a pupil lives closer to a high school of an adjoining county than to any high school located in the county of his residence, or when due to road or geographical conditions it is impractical to attend the high school of his own district, and when proper application has been made to the county superintendent of schools by the parent or guardian of the pupil for whom such transfer is desired; provided, that the county superintendent of schools may at his discretion require a pupil obtaining such transfer to attend the high school nearest his residence.

In all other cases the county superintendent of schools may authorize at his discretion any eligible pupil to attend a high school in a county outside of his residence.

No payment shall be made for attendance in another state except where such attendance is in a high school in a county adjacent to the county of the student's residence.

Application for permission to attend a high school outside the county of residence shall be made to the county superintendent of the county of the pupil's residence before July 1, previous to the year of attendance, except in those cases where circumstances make this impossible. The county superintendent must then approve or disapprove these applications and notify the individuals concerned, and the high school to be attended, and the county superintendent of the county where the pupil will attend school. At the end of the school year attended and before July 15, the clerk of the school district operating the high school attended shall send to his county superintendent the name of all pupils from outside of the county attending his school, together with such pupils' home addresses and the number of days such pupils actually attended his high school, who in turn will transmit this information to the county superintendent of the pupils' residence.

Tuition for the year attended is hereby made an obligation of the county of residence for the following year. Before August 1 each year, the county superintendent of the county of residence of the pupils concerned shall make out a high school transfer budget. The total of such transfer budget shall be determined by multiplying the number of pupils attending high school outside of his county by two hundred fifty dollars (\$250.00) in the case of attendance at a high school with an average number belonging up to one hundred (100) pupils; two hundred twenty-five dollars (\$225.00) in case of attendance at a high school with an average number belonging from one hundred one (101) to four hundred (400); and two hundred dollars (\$200.00) in case of attendance at a high school with an average number belonging over four hundred (400); provided further, that the pupil has attended at least forty (40) days.

The total of the transfer budget shall be subtracted from the receipts from the county ten (10) mill levy for high schools before the remainder

of such receipts is distributed to the high schools of the county. Such total of the transfer budget shall be held in a transfer fund separate and apart from other school funds and shall be allocated by the county treasurer upon instructions from the county superintendent.

In December of each year the county superintendent of the county of the pupil's residence shall notify his county treasurer of the amount to be transferred to each high school educating the pupil concerned, and the said county treasurer shall forthwith remit said amounts to the county treasurer of the county in which such high schools are located. The county treasurer receiving such transfers of money shall place the amount to the credit of the general fund of the high school concerned. Receipts by any high school for tuition are to be used against the needs of the budget after county and state aid have been received.

Whenever pupils are inmates of the Montana state orphans' home at Twin Bridges and attend the public high school in Twin Bridges, the latter school shall be reimbursed from the state public school equalization fund at the rate of two hundred fifty dollars (\$250.00) for each such pupil; provided, however, that this amount of tuition is not considered as a part of state equalization aid. Application for this tuition from the state is to be made in the same manner and at the same time as for regular state equalization aid.

Whenever pupils residing in Montana are approved for attendance in a high school in an adjoining state, and whenever pupils in an adjoining state are approved for attendance in a high school in Montana, the above schedule of tuition payments may be waived, and payments arrived at on the reciprocal basis with the state involved. The state superintendent of public instruction is hereby authorized to negotiate with the state superintendent of public instruction of each state involved in arriving at tuition payments, which may either be on a per pupil basis of a flat amount or on an actual cost basis.

History: En. Sec. 81, Ch. 148, L. 1931; amd. Sec. 4, Ch. 217, L. 1939; amd. Sec. 1, Ch. 219, L. 1943; amd. Sec. 1, Ch. 146, L. 1949; amd. Sec. 3, Ch. 106, L. 1951; amd. Sec. 1, Ch. 22, L. 1953; amd. Sec. 1, Ch. 70, L. 1959.

# Collateral References

Schools and School Districts € 154.
79 C.J.S. Schools and School Districts § 450.

Constitutionality, construction, and effect of statutes in relation to admission of nonresident pupils to school privileges. 72 ALR 499 and 113 ALR 177.

- 75-4231. (1262.83) General powers and duties of boards of trustees. The board of trustees of every county high school and of every school district maintaining a district high school shall have the power, and it shall be its duty:
- 1. To keep a full and permanent record of all the acts of the board and of all warrants issued against funds disbursed by it; and to pay out money only upon warrants drawn against the funds of the high school, each warrant specifying upon its face the specific purpose for which it is drawn and the disbursement represented thereby, and to keep a separate set of books for all receipts and disbursements for high school purposes, which said

books must be kept in accordance with the rules and regulations to be prescribed by the state superintendent of public instruction.

- At its discretion as restricted by law to purchase, or otherwise acquire, real estate to be used as a site or sites for a high school, high school dormitories, high school gymnasiums, and other high school buildings, or for any proper high school purposes, and to sell and to dispose of the same; at its discretion as restricted by law to build, purchase, or otherwise acquire, a high school building, high school dormitories, high school gymnasiums, and other buildings necessary for the high school, and to sell, move and dispose of the same; at its discretion as restricted by law to lease or contract with the board of trustees of any school district, or with any person, for suitable buildings or quarters to be used for any high school purposes or as a high school dormitory or gymnasium, and for such term not exceeding three (3) years as the board may deem for the best interests of the high school; at its discretion as restricted by law to purchase, or otherwise acquire, all necessary and appropriate equipment and supplies for the conduct, operation and administration of the high school, including high school dormitories and gymnasiums; at its discretion as restricted by law to make all contracts and to do all things necessary to carry out or execute all or any of the powers herein specified and conferred upon the board; provided, all boards of trustees of county high schools, or districts maintaining high schools, shall be prohibited from letting any contracts for building, furnishing, repairing or other work for the benefit of the school, or purchasing supplies for said school, where the amount involved is one thousand two hundred fifty dollars (\$1,250.00) or more, without first advertising in a newspaper published in the county for at least two (2) weeks, calling for bids to perform such work, and the board shall award the contract to the lowest responsible bidder; provided further, that the board of trustees shall have the right to reject any or all bids; provided that these provisions shall not apply in case of extreme emergencies.
- But the board shall exercise no power whatsoever conferred upon it by this subdivision 2 whereby obligations are assumed or an indebtedness created in excess of the funds on hand, belonging to the high school, and not otherwise appropriated, or available to the board from the collection of taxes actually levied for the current year, or from the sale of bonds already authorized; and the power of the board to purchase, or otherwise acquire, or to sell, or dispose of, a site or sites for a high school, high school dormitories, high school gymnasiums, or other high school buildings, or for any proper high school purpose, or to build, purchase, or otherwise acquire, a high school building, high school dormitories, high school gymnasiums, or other buildings necessary for the high school or to sell, move or dispose of the same, shall be exercised only at the direction of a majority of the qualified electors of the county in the case of a county high school, or of the district in the case of a district high school, voting at an election to be called by the board, and otherwise noticed, conducted, canvassed and returned in the same manner as the annual election of school trustees in school districts of the first class.

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- (c) Provided, however, that where a site or sites for a high school, high school dormitories, high school gymnasiums or other high school buildings or for any other proper high school purposes is contiguous to a site upon which there exists a high school building erected and in use for high school purposes, the board may purchase or otherwise acquire such contiguous site or sites without calling for a vote of the qualified electors of the county, in the case of a county high school, or the district, in the case of a district high school, and upon the making of such a purchase of, or otherwise acquiring, such site or sites, the board may enter into a contract or obligation providing for the purchase of said site or sites by deferred payments and may incur indebtedness for the whole or any part of said purchase price and shall not be restricted in the terms of said contract or the amount of said purchase price except that the amount of the indebtedness incurred shall not exceed ten thousand dollars (\$10,000.00) as to principal and interest; provided further, however, that before making any such purchase the board shall duly pass a resolution declaring such lands to be purchased necessary for school purposes of said district, and provide for the purchase thereof; provided further, that notice of the meeting at which said resolution is to be considered for final adoption and of the proposed passage of said resolution shall be given as provided by law for notices of election of trustees, at which meeting the electors of said district shall have the right to be present and to protest the passage of said resolution.
- (d) If at the hearing on such resolution protests against the adoption of the same shall be made and the board of trustees shall adopt the same over such protests, the resolution shall not become effective for fifteen (15) days after the date of its adoption, during which time any taxpayer or taxpayers may appeal to the district court by filing with the clerk of such court a verified petition, a copy of which shall theretofore have been served upon the clerk or secretary of the board of trustees. Said petition shall set forth in detail the objections of the petitioners to the adoption of such resolution or to the purchase of the property as provided for in said The service and filing of said petition shall operate to stay such resolution until final determination of the matter by the court. Upon the filing of such petition the court shall immediately fix a time for hearing the same which shall be at the earliest convenient time. At such hearing the court shall hear the matter de novo and may take such testimony as it deems necessary. Its proceedings shall be summary and informal and its determination shall be final.
- 3. In the case of a county high school, to employ for a period of not exceeding two (2) years some person as principal of the county high school who shall possess the qualifications required of a district superintendent of schools and who shall have charge of the county high school and whose tenure shall be the same as that of a district superintendent, except that the term shall be two (2) years instead of three (3).
- 4. In the case of a district high school, to employ for a period of not exceeding three (3) years some person as district superintendent and/or principal of schools who shall possess the qualifications required by law and who shall have charge of the district high schools.

- 5. To employ such assistants and teachers upon the recommendation of the county high school principal or district superintendent or principal as the board may deem necessary for the proper conduct of the school, provided, however, that the assistants and teachers employed shall be possessed of the qualifications prescribed by the state board of education.
- 6. To fix the salaries and compensation to be paid to the principal or district superintendent and assistants and teachers employed.
- 7. To adopt on the recommendation of the county high school principal or district superintendent or principal such courses of study as will adequately and properly fit the graduates of the high school for admission to any of the state institutions of higher education or any other course of study approved by the state board of education, provided, however, that such courses of study shall in any event conform to the standards prescribed by the state superintendent of public instruction under section 75-4220.
- 8. To admit to the high school without payment of tuition any pupil residing within the county and eligible for admission to high school under the rules and regulations of the state board of education.
- 9. In its discretion to admit to the high school any pupil residing in another county whose transfer is not authorized by section 75-4230 upon the payment of such tuition as the board may fix, subject to any restrictions otherwise imposed by law, and provided that such pupil is eligible for admission to high school under the rules and regulations of the state board of education. But no such pupil shall be admitted to the high school or permitted to continue in attendance thereat to the exclusion of pupils residing in the county wherein the high school is located.
- 10. To provide by contract, purchase, or otherwise, for free textbooks and all necessary and requisite school supplies, furniture, furnishings and equipment, for the repair of high school buildings and property, and for other needs of the high school, including dormitories and gymnasiums, grounds, faculty or school board, but subject at all times to the restrictions imposed by subdivision 2 of this section, or otherwise by law.
- 11. To rent, lease and let to such persons and entities as the board may deem proper the high school halls, gymnasiums, buildings, and parts thereof, for such time and rental as the board may designate, and to pay over to the county treasurer all sums collected on account of such letting for the credit of the high school.
- 12. To close the high school at its discretion during the annual session of the state teachers' association and to allow the principal or district superintendent and teachers to attend such annual session without loss of salary.
- 13. To make such reports from time to time as the county superintendent of schools, the state superintendent of public instruction or the state board of education may require.
- 14. To equip, operate and maintain a high school dormitory or dormitories, for the use of the teachers and/or pupils of the school; to employ a suitable matron to take charge of, direct and supervise any such dormitory and such other employees as may be necessary; and to set aside out of the general funds of the high school a sum not exceeding one hundred dollars

(\$100.00), to be designated as the dormitory petty cash fund, which shall be placed at the disposal of the matron for the purpose of paying incidental petty expenses necessarily incurred from time to time in the operation of the dormitory, and to replenish such fund as the same may become exhausted, provided, however, that the matron shall keep an accurate and detailed account of her administration of the dormitory petty cash fund in such form as the state examiner may prescribe, and shall take proper receipts covering every disbursement made by her from such fund, and provided further that no single account or item paid by her out of the said fund shall exceed in amount ten dollars (\$10.00).

15. To transact all business, to make and execute all contracts, to acquire, hold and dispose of all property, whether real or personal, in the name of the county or school district, as the case may be; and generally to have, possess, exercise and enjoy all powers and authority necessary to execute the specific powers, and to discharge the particular duties hereinbefore conferred and imposed upon the board; but nothing contained in this section shall be deemed or construed to confer any power or authority upon any board contrary to the provisions of sections 75-1637 and 16-807, in any case where the provisions of these sections, or either of them, would otherwise be applicable.

History: En. Sec. 83, Ch. 148, L. 1931; amd. Sec. 1, Ch. 207, L. 1939; amd. Sec. 2, Ch. 106, L. 1951; amd. Sec. 1, Ch. 43, L. 1955.

# Subd. 5, Mandamus

Where nonunion schoolteachers were offered a salary increase only if they signed a contract which contained a union security clause, they could not sue in contract for the increased salary because they had no written contract with the district; but they were entitled to bring a mandamus action against the school district to obtain a judgment declaring that they could not be discriminated against, compelling the district to enter into contracts with them, and ruling that the union security provision was void. Benson v. School District No. 1, 136 M 77, 344 P 2d 117.

### Subd. 5, Union Security Contracts

School trustees have no authority or power to discriminate between teachers as to the amount of salary because of their membership or lack of membership in a labor union; therefore, a union security clause in a contract offered schoolteachers was void. Benson v. School District No. 1, 136 M 77, 344 P 2d 117.

### References

Habel v. High School District "C" of Cascade County, 129 M 588, 292 P 2d 349, 351.

# Collateral References

Schools and School Districts 48(6), 64 et seq., 90 et seq., 127 et seq., 148 et seq., 78 C.J.S. Schools and School Districts § 99, 154 et seq., 239 et seq.; 79 C.J.S. Schools and School Districts § 323, 445.

47 Am. Jur. 316, Schools, § 29 et seq.

75-4232. (1262.84) Fees. The board of trustees of any school district or county high school may require pupils in the commercial, industrial arts, music, domestic science, scientific or agricultural courses to pay reasonable fees to cover the actual cost of breakage and of excessive supplies used.

History: En. Sec. 85, Ch. 148, L. 1931.

79 C.J.S. Schools and School Districts § 456.

### Collateral References

Schools and School Districts 171.

75-4233. (1262.85) Consolidation. Whenever it shall appear to the board of county commissioners to be for the best interests of any two or more high schools in the county and for the high school system in the

county as a whole to effect a consolidation of such high schools it shall have the power and authority to effect such consolidation and to determine all questions involved in effecting such consolidation, provided, however, that before such consolidation shall become effective it shall be approved by the state superintendent of public instruction.

History: En. Sec. 95, Ch. 148, L. 1931.

### Arbitrary Action

It would seem that the legislature, by enacting Sec. 95, Ch. 148, Laws 1931 (this section), never intended to confer upon the board of county commissioners the arbitrary power of consolidating county high schools without notice to anyone affected thereby, and without making any provision for the disposition of the property of the school which is discontinued, in view of the general policy governing the schools as evidenced by the school laws, taken as a whole. Box v. Duncan, 98 M 216, 38 P 2d 986.

### Date of Consolidation

Section 75-1804, declaring that no school district shall be created or boundaries thereof changed between March 1 and July 1 of any calendar year, was not impliedly

repealed by this section. Box v. Duncan, 98 M 216, 38 P 2d 986.

Action of the board of county commissioners, taken under this section, ordering the consolidation of the high schools in two towns in a county in March, 1934, thus in effect creating a new school district at least for high school purposes, contrary to Ch. 37, Laws 1933 (amendatory of Ch. 18, Laws 1923), (section 75-1804) declaring, inter alia, that no new school district shall be created or boundaries changed between March 1 and July 1 of any calendar year, was void. Box v. Duncan, 98 M 216, 38 P 2d 986. (Mr. Justice Angstman dissenting.)

### Collateral References

Schools and School Districts 14, 33. 78 C.J.S. Schools and School Districts \$\ 27, 57.

75-4234. (1262.86) Establishment of part-time high schools and high school classes. The board of trustees of any high school district or of any county high school may establish part-time high schools or high school classes for eligible pupils residing or employed within the jurisdiction of the board, who are over fourteen (14) years and less than twenty-one (21) years of age and who have left the regular full-time day schools to work.

History: En. Sec. 96, Ch. 148, L. 1931.

78 C.J.S. Schools and School Districts 13.

### Collateral References

Schools and School Districts 11.

75-4235. (1262.87) Part-time high schools—purpose. Part-time high schools and high school classes shall provide courses of study for children who are employed and are between the ages of fourteen (14) years and twenty-one (21) years. Such courses shall either supplement the work in which the pupils are engaged or shall continue their general education already begun in the regular full-time day schools, or shall tend to stimulate and improve their civic and vocational intelligence.

History: En. Sec. 97, Ch. 148, L. 1931.

75-4236. (1262.88) Reimbursement for salaries of teachers of part-time high schools and high school classes. Whenever the board of trustees of any school district or county high school shall establish a part-time high school or part-time high school classes in accordance with this chapter and pursuant to the rules and regulations and with the approval of the state board of education, it shall be entitled to be reimbursed for the salaries paid the teachers in the part-time high school or of the part-time high school classes to the extent of fifty per centum (50%) of the salaries paid, such reimburse-

ment to be made from any funds of the state, whether derived from the federal government or otherwise, which may be available for the promotion of vocational education.

History: En. Sec. 98, Ch. 148, L. 1931.

78 C.J.S. Schools and School Districts § 21 et seq.

Schools and School Districts 19(1).

75-4237. (1262.89) Night schools—establishment. The board of trustees of any school district or county high school shall have the power to organize and maintain outside of the hours of the regular full-time day high school special sessions of the high school to be held in the evening, or at such other convenient time as the board may fix. Such special sessions shall be known as night high schools.

History: En. Sec. 99, Ch. 148, L. 1931.

75-4238. (1262.90) Attendance. Attendance at any night high school shall be free to all pupils residing in the district or county, as the case may be, who are eligible for admission to high school under the rules and regulations of the state board of education.

History: En. Sec. 100, Ch. 148, L. 1931. 79 C.J.S. Schools and School Districts § 455 et seq.

Collateral References

Schools and School Districts 159.

75-4239. (1262.91) Maintenance. The expenses of the maintenance of night high schools may be paid in the same manner and out of the same funds as the expenses of the regular full-time day high schools are paid, and for all purposes shall be deemed and held to be expenses of the maintenance of the regular high school.

History: En. Sec. 101, Ch. 148, L. 1931.

75-4240. (1262.92) Administration. The board of trustees on the recommendation of the county high school principal or district superintendent shall specify the subjects to be taught in the night high schools, and shall make all necessary rules and regulations for the sessions, the admission, promotion and graduation of pupils, and in general for the effective conduct and administration of such schools, but in no case, however, inconsistent with law or with the rules and regulations of the state board of education.

History: En. Sec. 102, Ch. 148, L. 1931.

75-4241. (1262.93) Acceptance of acts of Congress for promotion of vocational education. The state of Montana hereby reaffirms the acceptance of and assents to the terms and provisions of the act of Congress entitled "An act to provide for the promotion of vocational education; to provide for co-operation with the states in the promotion of such education in agriculture and the trades and industries; to provide for co-operation with the states in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure," as heretofore expressed by the fifteenth legislative assembly of the state of Montana, chapter 102 of the session laws of 1917, and by the sixteenth legislative assembly of the state

of Montana, chapter 192 of the session laws of 1919 and further hereby accepts and assents to the terms and provisions of all acts of the Congress amendatory of the act foregoing, and to the terms and provisions of an act entitled, "To provide for co-operation with the several states and territories in care, treatment, education, vocational guidance and placement, and physical rehabilitation of crippled children, and for other purposes."

History: En. Sec. 103, Ch. 148, L. 1931. 78 C.J.S. Schools and School Districts \$ 21.

Collateral References

Schools and School Districts 19(1).

75-4242. (1262.94) Rules and regulations to be adopted by the state board of education. The state board of education shall have authority to adopt all necessary rules and regulations governing the establishment, conduct and administration of vocation courses, including the power to fix the qualifications of instructors and the course of study to be followed. But such rules and regulations adopted and all courses of study prescribed in accordance shall conform to the requirements of the federal board of vocational education.

History: En. Sec. 104, Ch. 148, L. 1931.

75-4243. (1262.95) Advisory committee—composition—qualifications of members—meetings—power and duties—expenses. The state board of education may appoint an advisory committee consisting of four (4) citizens of the state and the state superintendent of public instruction, or a person designated by him. Of the four (4) citizens appointed, one (1) shall be a representative of the manufacturing and commercial interests, one (1) a representative of the agricultural interests, one (1) a representative of skilled labor, and one (1) a representative of home-making interests. This advisory committee shall meet upon the call of the state superintendent of public instruction. It shall have power to call to the attention of the state board of education any matter relating to vocational education which in its judgment should be considered by the state board of education; and to present to the state board of education its recommendations for the adoption by the said board of any plan for co-operation between the state of Montana and the federal government in the promotion of vocational education in the state, and its recommendations concerning any proposed changes in legislation affecting vocational education, and its recommendations relative to any proposed publication by the state board or announcement of its principles and policies in so far as the interests and welfare of vocational education may be concerned.

The members of this advisory committee shall be entitled to their actual expenses in attending its meetings, such expenses to be paid from any moneys appropriated for the promotion of vocational education.

History: En. Sec. 105, Ch. 148, L. 1931. 78 C.J.S. Schools and School Districts

Collateral References

Schools and School Districts \$\sim 47.

75-4244. (1262.96) Co-operation of the state board of education with local boards of school trustees in vocational education. The state board of

education shall have authority to co-operate with the several boards of trustees of school districts and boards of trustees of county high schools in the establishment and maintenance in the public elementary schools and public high schools of the state appropriate courses for vocational training in agriculture, home economics, the trades and industries and commercial branches.

History: En. Sec. 106, Ch. 148, L. 1931.

75-4245. (1262.97) Duties of superintendent of public instruction. The superintendent of public instruction shall be the executive officer of the state board of education for the administration of the acts of Congress mentioned in section 75-4241 and of all laws of the state of Montana relating thereto. By and with the advice and consent of the state board of education he shall employ such assistants as may be necessary properly to carry out the provisions of the said acts of Congress and of such laws of the state of Montana as may relate thereto. He shall put into effect such rules and regulations as the state board of education may adopt and promulgate for the promotion of vocational education, and shall prepare and submit such reports of the condition of vocational education in the state of Montana as the state board of education may require. The superintendent of public instruction shall be the custodian of all records of the state board of education which pertain to vocational education and shall keep all such records in his office in the capitol of the state.

History: En. Sec. 107, Ch. 148, L. 1931.

75-4246. (1262.98) Apportionment of funds for vocational education. The state board of education shall apportion all moneys appropriated for vocational education, and any money received for vocational education from the federal government under the acts of Congress mentioned in section 75-4241, or otherwise to the public elementary schools and public high schools of the state in which there are established and maintained courses for vocational training in agriculture, home economics, the trades and industries and the commercial branches. But no apportionment shall be made to any school until the courses for vocational training in such school and the instructors employed therein shall first have been approved by the state board of education. Moneys received from the federal government for the purpose of training teachers, supervisors, and directors of vocational courses together with all moneys appropriated from time to time by the legislative assembly of the state of Montana for a like purpose shall be apportioned by the state board of education to the several educational institutions of the state wherein vocational teachers, supervisors and directors are trained under the direction of the said state board.

History: En. Sec. 108, Ch. 148, L. 1931.

78 C.J.S. Schools and School Districts § 21.

Schools and School Districts 19(1).

75-4247. (1262.99) State treasurer as custodian of moneys. The treasurer of the state of Montana is hereby designated as the custodian of all funds for vocational education. At the direction of the state board of edu-

cation he shall disburse all moneys appropriated from time to time by the legislative assembly of the state for purposes of vocational education, and all moneys received by the state of Montana for vocational education from the federal government. With the state treasurer shall be deposited all funds received from any source for the establishment, support, maintenance or furtherance of vocational education in the state.

History: En. Sec. 109, Ch. 148, L. 1931. 78 C.J.S. Schools and School Districts \$ 20.

Collateral References

Schools and School Districts 18.

**75-4248.** (1262.100) **General school law—when applicable.** All high schools of the state shall be regulated and governed by the general school laws of the state in any case for which provision is not made in this code.

History: En. Sec. 110, Ch. 148, L. 1931.

Collateral References

References

Schools and School Districts \$\sim 20\$. 78 C.J.S. Schools and School Districts \$83 et seq.

Box v. Duncan, 98 M 216, 38 P 2d 986.

# CHAPTER 43

## DESIGNATION OF HIGH SCHOOLS AS VOCATIONAL TRAINING CENTERS

Section 75-4301. Designation of certain high schools as vocational training centers.

75-4302. Branches of vocational education.

75-4303. Eligibility and procedure for admission.

75-4304. Attendance of persons residing outside county.

75-4305. Rules-promulgation.

75-4306. Adults-admission on paying tuition.

75-4307. Fees chargeable.

75-4301. Designation of certain high schools as vocational training centers. The state board for vocational education may, upon the application of the board of trustees of any district high school, county high school, or high school district, maintaining a vocational training department with facilities for additional enrollment in such department, designate such high school as a vocational training center.

History: En. Sec. 1, Ch. 160, L. 1939. 79 C.J.S. Schools and School Districts & 485.

Collateral References

Schools and School Districts 164.

75-4302. Branches of vocational education. Vocational education shall include those branches of training for which the federal government by any act of Congress is, or may be authorized to compensate the states for promoting vocational education in agriculture, home economics, the trades and industries, distributive occupations, aeronautics, and the commercial branches.

History: En. Sec. 2, Ch. 160, L. 1939.

75-4303. Eligibility and procedure for admission. Vocational training centers designated by the state board for vocational education shall admit for training, on a nontuition basis, any resident of the state of Montana, between the ages of 16 and 21 years, provided that any such resident of

the state, residing out of the county wherein a vocational center is located, shall make application for admission to training on or before the first day of June of the school year preceding the opening of the next school year. Notice of the acceptance or rejection of such applicant shall be given by the local authority of the training center on or before the first of July, following receipt of the application. Notice of the acceptance of the applicant shall be presented to the county superintendent of schools and the board of county commissioners of the applicant's residence on or before the 15th day of July.

History: En. Sec. 3, Ch. 160, L. 1939.

79 C.J.S. Schools and School Districts \$\$ 448, 449 et seq.

Collateral References

Schools and School Districts \$\infty\$152, 153.

75-4304. Attendance of persons residing outside county. When attendance of any eligible person between the ages of 16 and 21 years at a designated vocational training center, outside of the county of his residence, is authorized, as provided in section 75-4303, the board of county commissioners of the county of such residence must forthwith direct the county treasurer to pay from the high school transfer fund to the board of trustees of the school district, high school district or county high school designated as a vocational training center at which attendance has been authorized the sum of fifty cents (50c) per day for each and every day of attendance at the time of the June apportionment, provided that attendance for less than thirty-five days shall not be counted, and further provided that the total amount apportioned for each attendant for each school year shall not exceed the sum of \$90.00. The names of all applicants entitled to admission to the training center who are residents of the county wherein such center is located, shall be added to the list of those eligible to be counted for high school attendance.

History: En. Sec. 4, Ch. 160, L. 1939.

75-4305. Rules—promulgation. Rules and regulations governing admission of all applicants to vocational training centers shall be promulgated by the state board for vocational education, and shall be applied uniformly to all applicants.

History: En. Sec. 5, Ch. 160, L. 1939.

79 C.J.S. Schools and School Districts § 494 et seq.

Collateral References

Schools and School Districts 271.

75-4306. Adults—admission on paying tuition. Applicants who have passed their 21st birthday may be admitted to designated vocational training centers upon the payment of a tuition, the amount of such tuition shall be fixed by the state board for vocational education.

History: En. Sec. 6, Ch. 160, L. 1939.

75-4307. Fees chargeable. Fees for the use of equipment and material used in training may be charged by the board of trustees of the vocational training center.

History: En. Sec. 7, Ch. 160, L. 1939.

## CHAPTER 44

# JUNIOR COLLEGES—ESTABLISHMENT BY COUNTY OR DISTRICT HIGH SCHOOL BOARDS

Section 75-4401. Definition of terms.

75-4402. Method of establishment.

75-4403. Approval of superintendent of public instruction.

75-4404. Election.

75-4405. Establishment of junior college upon approval of electors.

75-4406. Location and faculty.

75-4407. Powers of state superintendent of public instruction.

75-4408. General administration, 75-4409. Tuition and budgeting.

75-4410. Requirements governing establishment and operation.

75-4411. Classes of students.

75-4412. Qualifications of dean and instructors.

75-4401. Definition of terms. The word "superintendent" as used in this act shall mean the superintendent of a district high school and the word "principal" as used in this act, means the principal of a county high school organized under the laws of the state of Montana. A "junior college" is hereby defined to be a public school established as provided in this act, in connection with accredited high schools for the purpose of providing one or more two-year courses beyond those of the four-year high school.

History: En. Sec. 1, Ch. 158, L. 1939.

### Collateral References

Schools and School Districts 11, 147. 78 C.J.S. Schools and School Districts

§ 13; 79 C.J.S. Schools and School Districts § 405.

What is common or public school within contemplation of constitutional or statutory provisions. 113 ALR 697.

75-4402. Method of establishment. County high school boards or district high school boards operating accredited schools shall have authority to establish and maintain in such schools in the manner provided in this act, a department of junior college work, to consist of not more than two years work beyond the four-year high school course. Whenever a county high school board or a district high school board operating an accredited high school shall receive a petition in writing signed by not less than twenty-five per cent of the registered voters of the county, in case the petition be filed with the county high school board, or by not less than twentyfive per cent of the registered voters of the school district in case such petition is filed with a district school board, requesting the establishment in such school of a department of junior college work, the board shall spread said petition upon its minutes. If said petition is found by the board to be signed by the requisite number of qualified voters, as disclosed by the registration lists for the last preceding election, the board shall not later than its next regular meeting, communicate to the state superintendent of public instruction the fact of the filing of such petition together with such pertinent facts and information as the board may have regarding the desirability of establishing such junior college department, together with the recommendations of the board relative to said matter. The board may also on its own initiative, and without the filing of any petition, adopt and spread upon its minutes a resolution requesting the establishment of such junior college and shall submit the same to the state superintendent of public instruction for his approval.

History: En. Sec. 2, Ch. 158, L. 1939.

75-4403 SCHOOLS

75-4403. Approval of superintendent of public instruction. The state superintendent of public instruction shall consider all such petitions submitted by county or district high school boards and may, if he deem it advisable, conduct an independent investigation with a view to determining the desirability of granting such petition. If the superintendent of public instruction shall approve of the granting of such petition, he shall notify the county or district high school boards of his approval of the petition. The county or district high school board shall thereupon submit to the registered voters of the county or district the question whether or not a junior college shall be established in their said county or district high school.

History: En. Sec. 3, Ch. 158, L. 1939.

75-4404. Election. In any election held under the terms of this act, all qualified voters of the county or district shall be entitled to vote. All such elections shall be called, noticed, held, canvassed and returned in the manner provided by law for the submission in such county or school district of the question of a bond issue for the purpose of building, enlarging, altering or acquiring by purchase a schoolhouse and the purchase of necessary lands therefor.

History: En. Sec. 4, Ch. 158, L. 1939.

75-4405. Establishment of junior college upon approval of electors. a majority of the votes cast at any election provided for in this act be in favor of the establishment of a junior college, the county or district high school board shall proceed to establish such junior college in the following manner: Not later than September first of the first year in which such junior college is proposed to be established, the county or district high school board shall apply to the superintendent of public instruction for permission to open such junior college, and shall accompany such application with a full statement of the curricula to be maintained and an application on behalf of the high school to be classified as a junior college. If the state superintendent of public instruction approves the application, he shall so notify the state board of education, which shall finally approve or disapprove of the establishment of such proposed junior college, and shall promptly notify the county or district high school board of its action. Upon receiving the final approval of the state board of education, the county or district high school boards shall have authority to proceed with the establishment and operation of such junior college. County high school boards or district high school boards may suspend the operation of a junior college, when established in the district or county, or may abolish a junior college when such board deems such discontinuance or abolishment to be for the best interests of the pupils and community. The above action may be taken by the high school board upon its own volition or after a petition has been presented to it signed by twenty per cent (20%) of the qualified electors of the district; provided, however, that the matter of discontinuance for one or more years, or of abolition of the junior college, shall be put to a vote of the qualified electors of the district when so requested in a petition signed by twenty-five per cent (25%) of such electors.

History: En. Sec. 5, Ch. 158, L. 1939; amd. Sec. 1, Ch. 173, L. 1953.

75-4406. Location and faculty. Every junior college shall be located in either a county maintaining a county high school or in a school district which maintains an accredited high school. There shall be employed for each such junior college a dean and at least the equivalent in point of teaching time of two or more junior college teachers who, together with the superintendent of the district high school or the principal of the county high school, shall constitute the faculty of the junior college.

History: En. Sec. 6, Ch. 158, L. 1939. 78 C.J.S. Schools and School Districts §§ 13, 170.

Collateral References

Schools and School Districts 11, 133.

75-4407. Powers of state superintendent of public instruction. The state superintendent of public instruction shall have and exercise the same supervision, control and power over all junior colleges established hereunder, as he now has over other departments of the public school system.

History: En. Sec. 7, Ch. 158, L. 1939. 78 C.J.S. Schools and School Districts \$ 86.

Collateral References

Schools and School Districts 47.

75-4408. General administration. Subject to the control of the state superintendent of public instruction, the superintendent of the district high school or the principal of the county high school, shall administer and exercise general supervision over the junior college, and shall make such reports as the state superintendent of public instruction may require. All teachers in junior colleges shall be employed in the same manner as now provided by law for the employment of high school teachers. Such superintendent or principal shall examine the certification of all persons under consideration as teachers in a junior college, and shall recommend for employment only such persons as are found to be fully qualified in accordance with the standards established by the state board of education and those standards hereinafter specified. He shall also keep a record of such certification and on or before October first of each year, shall transmit a copy of this record to the state superintendent of public instruction.

History: En. Sec. 8, Ch. 158, L. 1939. 78 C.J.S. Schools and School Districts \$\\$170, 237.

Schools and School Districts 133, 147.

75-4409. Tuition and budgeting. The county high school board or district high school board shall be authorized to include in their budget a sufficient sum to operate and maintain the junior college departments as herein provided, the amount of such budget to be left to their determination. Such boards are also empowered in their discretion, when they shall deem it necessary, to charge tuition at a maximum rate of not exceeding one hundred twenty-five and no/100 (\$125.00) dollars per year for attendance at junior colleges established under the terms of this act.

History: En. Sec. 9, Ch. 158, L. 1939. 79 C.J.S. Schools and School Districts \$\\$ 383, 455.

Schools and School Districts 103(4), 159.

75-4410. Requirements governing establishment and operation. The following requirements shall govern the operation of all junior colleges:

- a. A junior college shall be established in any county or school district only when the assessed taxable valuation of such county or school district exceeds \$3,000,000.
- b. The building space available for the use of a junior college must be modern, adequate and well adapted to the needs of the work to be undertaken.
- c. There shall be provided a general and reference library, well chosen and adequate for the courses offered and for the size of the enrollment in the junior college.
- d. Suitable laboratory space and equipment must be provided for such advanced work in the natural sciences as is included in the courses offered.
- e. Not counting the superintendent or principal of the county high school, there must be provided a faculty of not fewer than two members.
- f. The superintendent or principal of the county high school shall prescribe the duties of the dean and such duties may be made to include instruction, organization, classification, discipline and management of the junior college.
- g. The junior college year shall consist of at least nine months, or thirty-six weeks.
  - h. The minimum length of a recitation period shall be fifty minutes.

History: En. Sec. 10, Ch. 158, L. 1939. Collateral References

Schools and School Districts 11, 67, 75, 76, 133, 162, 163.

78 C.J.S. Schools and School Districts §§ 13, 170 et seq., 256 et seq., 266 et seq.; 79 C.J.S. Schools and School Districts §§ 471, 484, 487.

75-4411. Classes of students. Two classes of students may be admitted to a junior college.

a. Regular students limited to those who have completed, in a satisfactory manner, a full high school course or its equivalent.

b. Special students who wish to pursue special courses of college rank and who are deemed by the local authority fully qualified to do so.

No school board or high school board shall under any condition, issue to any person a certificate or diploma showing the completion of a junior college course except upon the recommendation of the superintendent of the district high school or principal of the county high school, and a two-year certificate or diploma shall be recommended only upon the completion in a creditable manner of at least sixty semester hours, or its equivalent, in a course approved by the state board of education.

History: En. Sec. 11, Ch. 158, L. 1939. 79 C.J.S. Schools and School Districts \$447.

Schools and School Districts 150.

75-4412. Qualifications of dean and instructors. The dean and all instructors in a junior college must have the following qualifications:

- a. Scholastic training of at least a master's degree or its equivalent, from a college recognized as fully entitled to confer such degree.
  - b. Professional training, at least fifteen semester hours in education.

History: En. Sec. 12, Ch. 158, L. 1939. 78 C.J.S. Schools and School Districts § 154 et seq.

Collateral References

Schools and School Districts 127.

## CHAPTER 45

### HIGH SCHOOL BUDGET ACT

Section 75-4501. Applicability of High School Budget Act.

75-4502. Budget forms.

- County superintendent's estimate of revenues-certificate of enroll-75-4503. ment.
- 75-4504. Preliminary budget meeting-notice-consideration of elementary grade budget.
- 75-4505. High school budget meeting—restriction of appropriations.
- 75-4506. 75-4507. Budgeting in school districts of more than one high school,
- Increase of budgets for high schools—when authorized.
- 75-4508. Special tax levy-rate. 75-4509. Application of act.
- 75-4510. Construction of act.

- 75-4511. Preparation of preliminary budget.
  75-4512. Preparation of preliminary budget by county superintendent in case of failure of trustees to submit.
- 75-4513. Repealed.
- 75-4514. Notice of meeting of school budget supervisors.
- County treasurer's statement of cash and registered warrants.
- 75-4515. County tr. 75-4516. Repealed.
- 75-4516.1. Levy of taxes.
- 75-4516.2. Allocation of federal aid funds.
- 75-4517. Meeting of board of school budget supervisors—levies—taxpayers may attend.
- 75-4518. Final adoption of budget—changes—hearings and investigations.
- 75-4518.1. Reduction in budget by budget board—allowance of additional expenses over foundation program.
- Final budget—expenditures over appropriations never to be paid. 75-4519.
- 75-4520. Transfers among budget items-limitation on transfers.
- 75-4521. High school budgets.
- 75-4522. Filing and endorsement of budget.
- 75-4523. Entry of amount of appropriation.
- 75-4524. Emergency warrants.
- 75-4525.
- Tax levy to pay emergency warrants. Lapse of appropriations—provision for unpaid claims. 75-4526.
- 75-4527. Statement of amounts to be raised by tax levies.
- 75-4528. Repealed.
- 75-4529. Filing of budget and distribution of copies.
- 75-4530. Accounts of county treasurer—transfers.
  75-4531. Issuance of warrants in triplicate—disposal of copies.
- Account of warrants-insufficient appropriation-notice to clerk of 75-4532. exhaustion of appropriation.
- 75-4533. Budget supervisors for joint school districts.
- Determination of amount of budget in joint districts—apportionment. Apportionment between counties of tax for joint districts. 75-4534.
- 75-4535.
- 75-4536. Repealed.
- 75-4537. County treasurers to transmit funds to county keeping budget and accounts.
- 75-4538. Care and disbursement of moneys.
- 75-4539. Repealed.
- 75-4540. Enforcement of provisions—forms to be furnished—use of forms.

75-4501. (1263.1) Applicability of High School Budget Act. This act shall apply to all districts maintaining district high schools and to all county high schools. As used herein the term "district high school" means a school maintained by a school district and which comprises some one or more of the grades of school work intermediate between the elementary grades and the institutions of higher education of the state of Montana; the term "county high school" means a school established by a county under the provisions of sections 1262 to 1265 inclusive; the term "district" shall mean a district maintaining a district high school; the term "board," "trustees" and "board of trustees" and "school trustees" shall mean the board of trustees of a school district maintaining a district high school and boards of trustees of county high schools; the term "clerk" shall mean the clerk of the school district and the secretary of the board of trustees of a county high school; the term "budget board" shall mean the board of school budget supervisors.

History: En. Sec. 1, Ch. 178, L. 1933.

NOTE.—Sections 1262 to 1265, referred to above, were repealed by Ch. 148, Laws 1931.

### Collateral References

Schools and School Districts \$\infty 103(4)\$. 79 C.J.S. Schools and School Districts § 383.

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3.

75-4502. (1263.2) Budget forms. The state superintendent of public instruction shall cause a sufficient number of budget forms to be printed for use in all counties, which budget form shall be in substantially the following form:

# PART I—EXPENDITURES

			٠.	
	Actual Expenditures Last Completed School Year 193 193	Approved Budget Current School Year 193 193	Estimated Budget Required Ensuing School Year 193 193	Approved Budget Ensuing School Year 193 193
I. GENERAL	CONTROL	1.		
School Board and Clerk	for			
II. INSTRUCTI	IONAL COS	ST.		
Salaries of Supervisors  Expenses of Supervisors  Salaries of Teachers	******	***************************************	***************************************	
Textbooks				
Supplies for instruction				

# III. MAINTENANCE OF PLANT. Repairs and Upkeep of Buildings and Repairs, Replacement and Upkeep of Equipment ..... IV. OPERATION OF PLANT. Salaries of Janitors and Engineers Supplies for Janitors and Engineers ...... ..... .......... Fuel ..... Light and Power ..... Water ..... Other Operating Expenses ..... ......... ..... V. AUXILIARY AGENCIES. Libraries ..... Health ..... Transportation and Rent ..... Other Expenses VI. FIXED CHARGES. Rent, Interest, Pensions, Insurance, etc.... VII. CAPITAL OUTLAY. New Grounds, Building and Alterations...\$ \$ \$ \$ New Equipment ..... TOTAL FOR MAINTENANCE OF SCHOOL INCLUDING CAPITAL OUTLAY. VIII. LIQUIDATION OF DEBTS. Redemption of Bonds ..... General Fund ..... Sinking Fund ..... ..... ..... Building Fund Refunding Bonds ..... ..... Interest on Bonds ..... ..... B. Other Debts Registered Warrants Interest on Registered Warrants ..... IX. MISCELLANEOUS. Refunds and Transfers TOTAL EXPENSES FOR ALL PURPOSES. General High School Fund Sinking Fund High School Building Fund Total All Funds

Χ.	CASH RESERVE REQUIRED TO MA JULY 1 TO DECEMBER 1 OF 1				L FROM
то	TAL\$		\$	\$	\$
	PART II—ESTIMATE	RECE	TDTC		
	TART II—ESTIMATE	1.	2.	3.	4.
				0.	1.
		Actual Receipts Last Completed School Year 193 193	Actual and Estimated Receipts Current School Year 193 193	Estimated Receipts Ensuing School Year 193 193	Approved Receipts Ensuing School Year 193 193
	XI. RECEIP		4	4	<b>.</b>
Α.	County High School Levy		\$ \$ \$	\$ \$ \$	\$ \$ \$
Dat	ed			, 19.	
	Clerk or Secretary of Board.  Chairn istory: En. Sec. 2, Ch. 178, L. 1933.  75-4503. (1263.3) County superintende		Presiden		
tific the formand estimates guid the	tenth day of April, in each year, transment to the clerk of each school district man to the clerk of the county high school mate of revenues the school district or derive during the ensuing school year for dance of the board of trustees in making school district or county high school, intially the following form:	tenden nit two nintaini , if any county r high g out th	t of scho (2) copi ng a dist y, which high scho school p ne prelim	es of the crict high shall control will purposes, inary bu	l, before budget h school, ntain an probably for the dget for
	COUNTY SUPERINTENDENT HIGH SCHOOL RET			OF	
A.	General Fund.				
	1. Apportionment of county high scho				
	<ol> <li>District high school levy, if any</li> <li>State funds for high school</li> </ol>				
	4. From all other sources				
	Total estimated revenues for mainte				

The county superintendent of schools shall, before sending out such budget forms, attach a certificate to the forms for each district and the county high school, if any, signed by the county superintendent, showing the total number of high school pupils enrolled and in regular attendance for forty (40) days, or more, during the then current school year, in such district or county high school, for the purpose of enabling the board of trustees to determine the maximum amount of the budget which they may adopt for maintaining the district or county high school in accordance with the provisions and limitations contained in section 75-4505, which certificate shall be in substantially the following form:

## COUNTY SUPERINTENDENT'S CERTIFICATE

County Superintendent of Schools.

Upon receipt of such budget forms the clerk of the board must insert in columns 1 and 2 thereof, the amount actually expended for each of the various items set forth therein during the last fully completed school year and the amount appropriated for each of such various items in the approved budget for the then current school year, and in columns 1 and 2 of Part II of such budget forms the actual receipts for the last fully completed school year and the actual and estimated receipts for the then current school year, and such clerk must then deliver such budget forms to the board of trustees at their first meeting thereafter.

History: En. Sec. 3, Ch. 178, L. 1933.

75-4504. (1263.4) Preliminary budget meeting—notice—consideration of elementary grade budget. The county superintendent of schools must, during the month of May, in each year, and before the thirty-first day of such month, cause a notice to be published one (1) time in the official newspaper of the county stating that the board of trustees of each school district maintaining a high school, and of the county high school, if there be one, will meet in session on the fourth Monday in June, at the usual place of meeting, and will at such meeting prepare and adopt a preliminary budget for all purposes connected with the district or county high school for the next ensuing school year, and that any taxpayer may appear at such meeting and be heard on such preliminary budget; provided that, instead of publishing a separate notice of the meetings of such boards of trustees for such purpose, the same may be included in the notice of meetings of the boards of trustees of school districts for the purpose of adopting preliminary budgets for elementary grades of such school districts, provided for in section 75-1705.

History: En. Sec. 4, Ch. 178, L. 1933; amd. Sec. 1, Ch. 64, L. 1941.

75-4505. (1263.5) High school budget meeting—restriction of appropriations. The board of trustees of every district maintaining a high school

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and of every county high school shall meet at the regular place of meeting of the board on the fourth Monday in June and consider, prepare and adopt a preliminary budget for the next ensuing school year for all high school purposes, and any taxpayer may appear at such meeting and be heard in regard to the preliminary budget. Such meeting may be continued from day to day, but not exceeding three (3) days in all for third class school districts or five (5) days in all for first and second class districts and county high schools. The total amount appropriated in Part I of the preliminary budget for any high school shall not exceed the foundation program of such high school except as hereinafter provided in section 75-4518.1; provided that nothing herein contained shall be construed as preventing the voting of an additional levy in accordance with the general school laws pertaining to the voting of additional levies.

History: En. Sec. 5, Ch. 178, L. 1933; 1941; amd. Sec. 1, Ch. 280, L. 1947; amd. amd. Sec. 1, Ch. 193, L. 1935; amd. Sec. 1, Sec. 13, Ch. 199, L. 1949. Ch. 166, L. 1939; amd. Sec. 2, Ch. 64, L.

75-4506. Budgeting in school districts of more than one high school. In school districts maintaining more than one high school the maximum budget which may be adopted for such high schools under section 75-4505, may be determined either by taking each school separately and finding the maximum budget which might be adopted therefor under said section and then adding together the maximums for all such high schools, or by using the maximum under said section for the total combined number of all eligible pupils in all such high schools, provided that all the high schools operated by a school district or county within the incorporated limits of a single city or town shall be treated as a high school unit for the purpose of determining the maximum budget.

History: En. Sec. 1, Ch. 132, L. 1945; amd. Sec. 1, Ch. 25, L. 1961.

Increase of budgets for high schools-when authorized. If it shall appear to the satisfaction of the board of trustees of any high school and the county board of school budget supervisors, that because or on account of an anticipated increase in amounts required for payment of salaries and other maintenance and operating expenses for any school year, the maximum amount which may be budgeted for such high school during such year, as set forth, specified and determined in the manner provided by section 75-4505, will not provide sufficient funds for such additional maintenance and operating expenses during such school year, then, and in that event only, the amount of the budget for such school year, as so set forth, specified and provided in said section 75-4505, may be increased by adding to such maximum amount not to exceed thirty per centum (30%) thereof. And all funds received by any school board from the federal government may be expended and shall not be included in the maximum herein set forth or provided in said section 75-4505, or by this act.

History: En. Sec. 1, Ch. 133, L. 1945.

75-4508. Special tax levy—rate. In each county in which one or more high schools are maintained, the board of county commissioners shall

annually levy on the second Monday in August a special tax for such high school or high schools at such rate that the amount when computed by applying the levy against the taxable valuation of the county will be the necessary amount to meet the approved budget or budgets.

History: En. Sec. 2, Ch. 133, L. 1945.

75-4509. Application of act. The provisions of this act shall apply only to budgets for high schools which may be adopted for either or both of the school years beginning July 1, 1945 and ending June 30, 1946, and beginning July 1, 1946 and ending June 30, 1947, and not to any of such budgets for any year or years thereafter, and this act shall cease to have any force or effect after the second Monday in August, 1947.

History: En. Sec. 3, Ch. 133, L. 1945.

75-4510. Construction of act. None of the provisions of this act shall be deemed or construed to be in conflict with or to repeal any of the provisions of section 75-4505, or any of the provisions of section 75-4516, but shall be deemed and construed as merely authorizing the budgeting of larger amounts and the levying of a tax for the school years, specified in section 75-4509, or for either thereof, when the same shall be necessary because of an anticipated increase in amounts required for payment of salaries and other maintenance and operating expenses during said years, or either thereof.

History: En. Sec. 4, Ch. 133, L. 1945.

NOTE.—Section 75-4516, referred to above, was repealed by Sec. 24, Ch. 199,

75-4511. (1263.6) Preparation of preliminary budget. When the board of trustees has determined the amount necessary to be expended during the ensuing school year for each item and purpose contained in the budget form, there shall be entered in column 3 of Part I of such form the amount so proposed to be expended for each such item and purpose, and in column 3 of Part II of such form the amounts which it is estimated will be received for high school purposes from all sources, and the budget forms shall then be signed by the clerk or secretary and the chairman or president of the board of trustees, and shall constitute the preliminary budget for the district or county high school.

The clerk of the board must transmit or deliver both copies of such preliminary budget, when so completed, and not later than July first, to the county superintendent of schools. Whenever any item in the preliminary budget shall provide for the payment of salary or compensation to more than one (1) person, there shall be set forth on a separate sheet, but attached to and made a part of the preliminary budget, each position or employment with the salary or compensation to each person filling the same.

History: En. Sec. 6, Ch. 178, L. 1933.

75-4512. (1263.7) Preparation of preliminary budget by county superintendent in case of failure of trustees to submit. If for any reason the board of trustees of a district or county high school shall fail to prepare and submit its preliminary budget, as herein required, the county superintendent of schools shall, on or before July tenth, prepare a preliminary budget for

such district or county high school in accordance with the provisions of this act, and shall note thereon the specific reasons why it was prepared by such county superintendent, and thereafter such proceedings shall be had as though said budget had been prepared and submitted by the board of trustees.

History: En. Sec. 7, Ch. 178, L. 1933.

# 75-4513. (1263.8) Repealed—Chapter 106, Laws of 1951.

Repeal

This section (Sec. 8, Ch. 178, L. 1933; Sec. 1, Ch. 151, L. 1935; Sec. 5, Ch. 217, L. 1939; Sec. 2, Ch. 219, L. 1943; Sec. 2, Ch. 146, L. 1949), providing for budgeting for students attending high schools outside of county or placed in state institutions, was repealed by Sec. 1, Ch. 106, Laws 1951, effective June 1, 1951.

75-4514. (1263.9) Notice of meeting of school budget supervisors. The county superintendent of schools, when publishing the notice that the preliminary budgets of school districts for elementary grades are on file in such office and that the board of school budget supervisors will meet on the fourth Monday in July to consider and act on the same, as provided in section 75-1708, shall include in such notice similar statements with regard to the preliminary budgets for district high schools and the county high school, if any.

History: En. Sec. 9, Ch. 178, L. 1933.

75-4515. (1263.10) County treasurer's statement of cash and registered warrants. Between the thirtieth day of June and the tenth day of July, the county treasurer shall prepare a statement for each school district maintaining a high school and for the county high school, if any, showing the amount of cash on hand, if any, in each of the regular funds of the district or county high school at the close of the last school year, and obligations to be met during the current school year, which statements must be attached to the preliminary high school budgets for such district, and county high school, and which shall be in substantially the following form:

# INFORMATION FROM RECORDS OF COUNTY TREASURER'S OFFICE.

Cash on hand June 30, 19...., and obligations to be met.

<ul> <li>I. For the General Fund of the District or County High School</li> <li>A. Cash on hand June 30 (including reserve)</li> <li>B. Amount of Outstanding Warrants</li> </ul>	\$
<ul> <li>II. For the Transportation Fund of the District or County High School</li> <li>A. Cash on hand June 30 (including reserve)</li> <li>B. Amount of Outstanding Warrants</li> </ul>	
III. For the Bus Depreciation Reserve Fund of the District or County High School A. Cash on hand June 30	

IV For the Self Supporting School Lunch Fund

of the District or County High School	
A. Cash on hand June 30	***************************************
B. Amount of Outstanding Warrants	
V. For the Retirement Fund of the District	
or County High School	
A. Cash on hand June 30	
B. Amount of Outstanding Warrants	
VI. For the Debt Service Fund of the District	
or County High School	
A. Cash on hand June 30	***************************************
B. Amount of Outstanding Warrants	
VII. For the Miscellaneous Federal Funds of the	
District or County High School	
A. Cash on hand June 30	
B. Amount of Outstanding Warrants	
VIII. For the Building Fund of the District or	
County High School	
A. Cash on hand June 30	
B. Amount of Outstanding Warrants	
IX. For the Adult Education Fund of the	
District or County High School	
A. Cash on hand June 30	
B. Amount of Outstanding Warrants	******************
X. For the Self-Supporting Housing &	
Dormitory Fund of the District or	
County High School	
A. Cash on hand June 30	•••••
B. Amount of Outstanding Warrants	******************
XI. For Any Other Required Fund of the	
District or County High School	
A. Cash on hand June 30	
B. Amount of Outstanding Warrants	
County Trea	
History: En. Sec. 10, Ch. 178, L. 1933; amd. Sec. 4, Ch. 62, L. 1961.	
75-4516. (1263.11) Repealed—Chapter 199, Laws of 194	9.

Repeal
This section (Sec. 11, Ch. 178, L. 1933;
Sec. 1, Ch. 131, L. 1941), providing for the levy of taxes for high school purposes,

was repealed as Sec. 1263.11, Revised Codes, 1935, by Sec. 24, Ch. 199, Laws 1949, effective June 1, 1949. For present law, see sec. 75-4516.1.

75-4516.1. Levy of taxes. It shall be the duty of the county commissioners of each county in the state to levy an annual special tax for high schools of ten (10) mills on the dollar of the taxable value of all taxable property within the county, which levy shall be made at the time and in the manner provided by law for the levying of taxes for county

purposes and which tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected; provided that if a levy of less than ten (10) mills should be sufficient to meet the total of the approved budgets of all school districts within the county, then such lesser levy shall be made, but no high school within a county levying less than ten (10) mills for high school purposes shall receive any apportionment from the state public school equalization fund.

If the revenues for the operation and maintenance of any high school, including the amount apportionable from said ten (10) mill special tax for high schools, shall be less than the foundation program of such high school and the approved additions thereto included in its budget, within the limitations hereinbefore specified, it shall be the further duty of the board of county commissioners to fix and levy a tax, in such number of mills as will produce the amount shown by the final budget to be raised by tax levy plus federal reimbursements in lieu of taxes, which tax shall, in the case of a county high school not located within a building district, be levied upon all property in the county, excepting the property of any district supporting a district high school, and shall, in the case of a county high school located within a high school building district, be levied upon all property in such building district and which tax shall, in the case of a district high school not located within a building district, be levied upon all property within the school district, and shall, in the case of a district high school located within a building district, be levied upon all property in such building district, provided, however, that such last mentioned additional tax shall not, in any event, exceed ten (10) mills unless the excess above said ten-mill limitation shall first have been authorized at an election held in accordance with the general school laws pertaining to the voting of additional levies, save and except that in any district wherein more than ten (10) mills is required to reach the permissive percentage limits, as set out in section 75-4518.1, above the foundation program, such increase above the ten (10) mill limit may be financed by federal reimbursements in lieu of taxes without a vote of the taxpayers up to the above mentioned percentage limits above the foundation program.

History: En. Sec. 15, Ch. 199, L. 1949; amd. Sec. 4, Ch. 208, L. 1951; amd. Sec. 1, Ch. 202, L. 1953; amd. Sec. 1, Ch. 246, L. 1961.

NOTE.—The word "hereinbefore" in this section probably refers to sec. 75-4518.1.

# Cross-Reference

Foundation program, sec. 75-3612.

### Collateral References

Schools and School Districts 233(1). 79 C.J.S. Schools and School Districts 383.

75-4516.2. Allocation of federal aid funds. Federal funds received by a school district under the provisions of Public Law 874, or funds designated in lieu thereof by the Congress of the United States, may be allocated to the various operating budgets of the school district by the board of trustees of the school district.

History: En. Sec. 2, Ch. 246, L. 1961.

Compiler's Note

Public Law 874 of the 81st Congress,

referred to above, is compiled as sections 236 to 244, Title 20, U. S. Code.

75-4517. (1263.12) Meeting of board of school budget supervisors levies—taxpayers may attend. On the fourth Monday in July, at the hour of ten o'clock Λ. M., the board of school budget supervisors of each county shall meet in the office of the county superintendent of schools. The county superintendent, as clerk of said budget board, shall lay before the budget board all of the preliminary budgets adopted by the trustees of the several school districts maintaining high schools, and the budget of the county high school, if there be one, and said budget board shall proceed to examine and consider such budgets. The board may adjourn its meeting from day to day but must approve and adopt the final budget for each such school district, and county high school, and fix and determine the amount to be raised by the special high school tax levy not later than the second Monday in August and before the fixing of such high school levy. At such meeting, and at all adjournments thereof, any taxpayer may appear before the budget board and be heard on the budget for any district, or on the budget for a county high school and on any item or amount contained therein.

History: En. Sec. 12, Ch. 178, L. 1933.

- 75-4518. (1263.13) Final adoption of budget—changes—hearings and investigations. (1) At such meeting the budget board shall have the power to make any changes or corrections it may deem necessary or proper in any item or amount contained in any high school budget, either by eliminating or striking out any item or amount contained therein, or by increasing or reducing the amount of any item, and when it appears to the budget board that the amount proposed to be expended for any item, as shown by a preliminary high school budget, is in excess of the amount actually required to be expended for such item, the board must reduce such amount to the amount actually required to be expended therefor; provided, however, that in the event the board of budget supervisors shall reject any such budget in whole or in part it shall cause the reasons for its rejection to be spread upon its minutes and a copy thereof to be immediately furnished to the chairman of the board of trustees which has submitted the budget, and provided further, that no final action on said budget shall be taken by the said board of budget supervisors until after a hearing thereon shall have been had, which hearing shall be held by the said board of budget supervisors on the first Monday in August after said budget shall have been submitted.
- (2) At said hearing the chairman of the board of budget supervisors, or a member of that body appointed by him; the chairman of the board of trustees of the district or county high school submitting such budget, or a member of the board appointed by him; and the county superintendent of schools shall constitute a board of review. This board of review shall have the power and it shall be its duty to consider such rejected budget and to arrive at a budget by a majority vote which shall not be subject to further review.
- (3) If it shall appear to the budget board that the amount which may be raised by the special high school tax levy within the limit prescribed by section 75-4516, when added to the amount of the county superintendent's estimate of receipts for all such districts, and the county high school, if

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any, as set forth in the preliminary budgets, will not be sufficient to pay the full amount of estimated expenditures for all purposes to be paid from the general high school funds as set forth in the preliminary budgets of all such districts, and county high school, if any, then the budget board must adjust and reduce the amounts proposed to be expended, as shown in the preliminary budgets, in such manner and to such extent that the total estimated expenditures, as shown in the preliminary budgets of all such districts, and county high school, if any, will not exceed the total amount of such estimated receipts and proceeds of the lawful tax levy which may be made under the provisions of section 75-4516, provided, that for the purpose of determining for what particular items contained in any preliminary budget the amounts to be expended are to be adjusted or reduced, the budget board may call in and question the members of the board of trustees and the clerk of the district or county high school and in adjusting or reducing such amounts the budget board shall be guided, as far as possible by their wishes; provided, further, that if any contract has been entered into between the board of trustees of any school district, or county high school, and any teacher, principal or other person, by the terms of which contract such teacher, principal or other person has been employed for the school year for which the preliminary budget has been prepared, or when any teacher or principal, by reason of employment during the last school year, is entitled under the provisions of section 75-2401, to retain his position and salary during the school year for which the preliminary budget was prepared, the board of school budget supervisors must not make any change in any item for salaries or wages which will reduce or in any manner affect the salary or wages of such teacher, principal or other person.

History: En. Sec. 13, Ch. 178, L. 1933. Laws 1949. For present law, see sec. 75-NOTE.—Section 75-4516, referred to above, was repealed by Sec. 24, Ch. 199,

Reduction in budget by budget board-allowance of additional expenses over foundation program. If the total amount of the proposed general fund expenses in the preliminary budget of any district or county high school shall exceed the foundation program thereof, the budget board shall, in the manner provided by section 75-4518, reduce such proposed general fund expenses to a total equal to said foundation program unless the board of trustees of said district or county high school shall establish to the satisfaction of the budget board that special circumstances exist which justify such additional expenses, and in such event a statement of the reasons for the allowance of such additional expenses shall be attached to said budget and signed by the chairman of the budget board. but the allowance of such excess expense over the foundation program shall not in any manner increase the amounts to be apportioned hereunder from the state public school equalization fund; and provided that, except in the case of the existence of the emergencies specified in section 75-4521, the entire amount of such additional expense over the foundation program to be included in any high school budget including any reserve fund, not to exceed thirty-five per cent (35%) of the amount appropriated in the final and approved budget for the then current school year, for the purpose of

maintaining the elementary and high school of the district from July 1 to November 30 of the next succeeding year, shall not be greater than thirty per cent (30%) of the foundation program of any high school, having an ANB of 100 or less pupils, and shall not be greater than twenty-five per cent (25%) of the foundation program of any high school having an ANB of more than 100 pupils.

History: En. Sec. 14, Ch. 199, L. 1949; amd. Sec. 3, Ch. 208, L. 1951.

Cross-Reference

Foundation program, sec. 75-3612.

Collateral References

Schools and School Districts 103(4). 79 C.J.S. Schools and School Districts \$ 383.

75-4519. (1263.14) Final budget — expenditures over appropriations never to be paid. When the budget board has determined and fixed the amount which may be expended for each item in the budget of a school district maintaining a high school or in the budget of a county high school, it shall enter the amount so fixed for each item in column 4, Part I, of the budget, and the amount so entered in such column for each item and the total of all amounts so entered in such column shall constitute the final budget and the appropriations for such school district, or county high school, for current school year, and the board of school trustees and all officers and employees of such district, or county high school, shall be limited in the making of expenditures or incurring of liabilities to the amount of such detailed appropriations, respectively; provided that transfers may be made from the appropriation for one item to the appropriation for any other item, as hereinafter provided. Expenditures made, liabilities incurred or warrants issued in excess of any of the final budget detailed appropriations, as originally determined or as revised by transfer, as hereinafter provided, shall not be a liability of the district or of the county high school and no money of the district, or county high school, shall ever be used for the purpose of paying the same.

History: En. Sec. 14, Ch. 178, L. 1933. 79 C.J.S. Schools and School Districts § 323. Collateral References

Schools and School Districts 90.

75-4520. (1263.15) Transfers among budget items—limitation on transfers. Whenever it appears to the board of trustees of any school district maintaining a high school, or of a county high school, that the amount appropriated for any item in the final high school budget is in excess of the amount actually required to be expended for such item during the year for which such budget was adopted, and that the amount appropriated for any other item in such final budget, and payable from the same fund, is less than the amount which will be actually required for such item during such school year, such board of trustees may direct the clerk to notify the county treasurer in writing to transfer the excess appropriation, or so much thereof as may be necessary, from such item to the item for which the appropriation is deficient, and the county treasurer must thereupon make a transfer of such amount. Provided, however, that no transfer shall ever be authorized by a clerk of a school district, and no transfer shall ever be made by a county treasurer between any appropriation made in a budget for main75-4521 SCHOOLS

taining a high school or high schools and any budget appropriation for maintaining elementary grade schools in the same district.

History: En. Sec. 15, Ch. 178, L. 1933.

- 75-4521. (1263.16) High school budgets. (1) Whenever the board of trustees of a county high school or the board of trustees of a school district maintaining a district high school or schools, at any time after December 31st of any school year, shall deem that an emergency exists by reason of an increase in the enrollment and attendance over that of the immediately preceding school year over and beyond the extent which such increase might reasonably have been anticipated at the time of the adoption of the budget for the then current school year, and that because of such increase in enrollment and attendance the budget approved and adopted for the then current school year does not provide sufficient funds to properly maintain and support such school or schools during the whole of the then current school year; or shall, at any time during a school year, deem that an emergency exists because of the destruction of any school property necessary to the maintenance of school, or its impairment by fire, flood, storm, riot, insurrection, or other act of God, to such an extent as to render it unfit or prevent its use for the school purposes for which theretofore used; or because of the entering by a court of competent jurisdiction of a judgment for damages against the district, or the enactment of legislation, after the adoption of the final budget, requiring expenditures not contemplated therein, such board of trustees by unanimous vote of all members of the board present at any meeting, the time and place of holding which all of the trustees shall have had reasonable notice, may adopt and enter upon their minutes a resolution, stating the facts constituting the emergency, the estimated amount of money required to meet such emergency, and the time and place when the board will meet for the purpose of considering and adopting an emergency budget for such current school year.
- (2) A copy of such resolution shall be published one time in the official newspaper of the county, a copy thereof shall be posted at the schoolhouse if a county high school or at the district high schoolhouse or at each such district high schoolhouse if there be more than one, and at the post office of the place or places in which the high school building or buildings may be situated, and a copy thereof shall be delivered to the county superintendent of schools and another copy delivered to the county clerk as clerk of the board of county commissioners of the county, the county superintendent of which has supervision over such county high school or district high school. The time designated in such notice for such meeting shall be not less than one week after publication, posting and delivery of such copies of resolution. Such meeting shall be open to the public and any taxpayer in the district shall have the right to appear and be heard.
- (3) If at such meeting a majority of the members of the board of trustees shall find that any such emergency actually exists, such board may make and adopt a preliminary emergency budget setting forth fully the facts constituting the emergency. If the emergency is due to increased enrollment and attendance the budget shall be so itemized as to show the

amount appropriated therein for each item of instructional cost, maintenance of plant, operation of plant and auxiliary agencies, in the order in which such items are required to be set out in the annual budget by section 75-1703, and the total amount to be appropriated for all such items; provided that the maximum amount which may be so appropriated in such emergency budget shall be determined in the following manner; the amount appropriated in the annual budget for the maintenance and support of such school or schools for the then current school year, less amounts appropriated as capital outlay for new buildings and alterations and new equipment, and reserve for the following school year, shall be divided by the number of pupils originally enrolled in such school or schools during the immediately preceding school year so as to ascertain the amount budgeted therein, less amounts appropriated for such capital outlay and reserve, for each such enrolled pupil, and such amount for each such enrolled pupil shall be multiplied by the increase in the number of pupils enrolled for the current school year over the number enrolled for the immediately preceding school year. The total amount appropriated in the emergency budget must not exceed such maximum amount

- (4) In the event of any other emergency described in this section the preliminary emergency budget shall state the amount to be appropriated therein, and as definitely as possible the details of the proposed expenditure of the appropriation.
- (5) Three copies of the emergency budget shall be furnished the county superintendent of schools and such county superintendent must lay one copy thereof before the board of county commissioners, which constitutes the board of school budget supervisors for the county, at the next regular meeting of such board. Such board shall have the power to make such changes in such budget, if any, as it may deem proper and necessary, and shall then approve such budget, either as adopted by the board of school trustees, or as changes by the board of county commissioners.

History: En. Sec. 16, Ch. 178, L. 1933; amd. Sec. 1, Ch. 192, L. 1943; amd. Sec. 1, Ch. 135, L. 1945.

75-4522. Filing and endorsement of budget. After the emergency budget has been approved by the board of county commissioners it shall be filed in the office of the county superintendent of schools who shall immediately notify in writing the clerk of the board of school trustees of the approval of such budget and of any changes which may have been made therein by the board of county commissioners. The county superintendent shall endorse on the two additional copies of the budget furnished by the board of school trustees the date of approval and any changes made therein, transmitting one thereof to the state superintendent of public instruction and delivering the other to the county treasurer.

History: En. Sec. 2, Ch. 135, L. 1945.

75-4523. Entry of amount of appropriation. The county treasurer, upon receiving such copy, shall enter in the budget accounts of such school district on his books the amount appropriated for each of the several items for which appropriations are made.

History: En. Sec. 3, Ch. 135, L. 1945.

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75-4524. Emergency warrants. After the approval of such emergency budgets, if the budget is to provide additional funds for the maintenance and support of the high school or schools, whenever the amount appropriated for any such item in the annual high school budget for such current school year has been fully used and such appropriation is exhausted, expenditures made thereafter shall be made by emergency warrants against the amount appropriated in the emergency budget, which emergency warrants shall be issued in the same manner and form and subject to the same conditions and provisions as set out in section 75-4531, except that on each thereof shall be distinctly endorsed "COUNTY HIGH SCHOOL EMER-GENCY WARRANT" or "HIGH SCHOOL WARRANT SCHOOL DIS-TRICT NO....... After deducting from the amount of money standing to the credit of the general fund of the county high school or the general fund of the district high school as the case may be the amount required to meet and take care of all unexpended appropriations in the annual budget for the current school year and reserve provided in such budget for the following school year, if any balance remains the same shall be used to pay such emergency warrants, in the order in which the same are presented for payment.

History: En. Sec. 4, Ch. 135, L. 1945.

Tax levy to pay emergency warrants. The county treasurer shall, not later than the first Monday in August of the following school year, make out a statement for such county high school or school district showing the total amount of such emergency warrants issued then outstanding and unpaid, and the amount of money, if any, on hand applicable to the payment thereof, and the amount for the payment of which a special tax levy should be made, and deliver the same to the board of county commissioners. Such board shall, on the second Monday in August, make and fix a levy against the taxable property of the county in the case of a county high school, or against the taxable property in the school district if a district high school which will raise sufficient funds to pay such outstanding emergency warrants, with interest thereon, and the county treasurer shall, when collected, place the same in a special fund and use the same to pay such outstanding emergency warrants with interest thereon. If after all such emergency warrants have been paid any amount remains in such special fund it shall be, by such county treasurer, transferred to the general fund of the county high school or to the high school fund of the district high school.

History: En. Sec. 5, Ch. 135, L. 1945.

75-4526. (1263.17) Lapse of appropriations — provision for unpaid claims. All appropriations, other than appropriations for uncompleted improvements in progress of construction, shall lapse at the end of the school year; provided that appropriation accounts shall remain open for a period of twenty (20) days thereafter for the payment of claims incurred against such appropriations prior to the close of the school year and remaining unpaid. After such period shall have expired all appropriations, except as hereinbefore provided regarding uncompleted improvements, shall be null

and void and any lawful claim presented thereafter against any such appropriation shall be provided for in the next ensuing budget.

History: En. Sec. 17, Ch. 178, L. 1933.

79 C.J.S. Schools and School Districts § 339 et seq.

Collateral References

Schools and School Districts 93.

75-4527. (1263.18) Statement of amounts to be raised by tax levies. After the budget board has completed and adopted the final budget for high school purposes for each district maintaining a high school, and for the county high school, if any, said board shall prepare and attach to each such budget a statement showing the amount necessary to be raised by tax levies for high school purposes, which statement shall be substantially as follows:

# SUMMARY OF REQUIREMENTS.

# A. MAINTENANCE OF HIGH SCHOOL.

History: En. Sec. 18, Ch. 178, L. 1933.

# 75-4528. (1263.19) Repealed—Chapter 199, Laws of 1949.

Repeal
This section (Sec. 19, Ch. 178, L. 1933),
providing for the levy of taxes for high
school purposes, was repealed as Sec.

1263.19, Revised Codes, 1935, by Sec. 24, Ch. 199, Laws 1949, effective June 1, 1949. For present law, see sec. 75-4516.1.

75-4529. (1263.20) Filing of budget and distribution of copies. After the final budgets for all school districts maintaining a high school, and for the county high school, if any, and the budget prepared by the county superintendent of schools under section 75-4513, and the joint district budgets have been approved and adopted by the budget board, the county superintendent of schools as clerk of such board shall file such final budgets in the office of the budget board, and shall make a full and complete copy of each thereof and transmit said copy to the state superintendent of public instruction on or before the first day of September. And the county superintendent shall, before the first day of September, send to the clerk of the board of school trustees of each school district and to the clerk of the board

of trustees of the county high school, if any, and deliver to the county treasurer, a copy of so much of each of such final budgets as approved and adopted by such budget board, as shows the different items for which appropriations were approved by such budget board and the amount of the appropriation approved for each such item.

History: En. Sec. 20, Ch. 178, L. 1933.

NOTE.—Section 75-4513, referred to above, was repealed by Sec. 1, Ch. 106, Laws 1951.

75-4530. (1263.21) Accounts of county treasurer—transfers. When the county treasurer has received from the county superintendent, as clerk of the budget board, a copy of so much of the said budgets as shows the items and appropriations approved by the budget board, as provided in section 75-4529, the county treasurer shall open an account on his books with each school district for which a final high school budget was adopted, and for the county high school, if any, and shall enter in such account each item for which any appropriation was made in such final budget and the amount appropriated therefor. The account for high school budget for each such district shall be separate and distinct from the account for elementary school budget for such district. If the clerk of any school district, or of a county high school shall direct the county treasurer to transfer any amount from one item of the final high school budget to another item of such budget, as authorized in this act, the county treasurer shall make such entries in the account of such school district, or county high school, as will show such transfer.

History: En. Sec. 21, Ch. 178, L. 1933.

79 C.J.S. Schools and School Districts § 331.

Schools and School Districts 92(1).

75-4531. (1263.22) Issuance of warrants in triplicate—disposal of copies. The clerk of each school district, and of the county high school, if any, must issue all warrants drawn against any fund for high school purposes in triplicate, and each thereof shall show on its face the particular item appropriation as set forth in the final budget, against which the warrant is drawn. The original warrant shall be delivered to the person entitled thereto; the duplicate, across the face of which shall be printed or endorsed "Not Negotiable—Copy for County Treasurer," shall be mailed to the county treasurer immediately after the original has been drawn and signed; and the triplicate across the face of which shall be printed or endorsed "Not Negotiable—Copy for Clerk of School District," or "Not Negotiable—Copy for Clerk of School District," or "Not Negotiable—Copy for Clerk of School District," as the case may be, shall be retained by the clerk of the school district or county high school as a receipt for such disbursement.

History: En. Sec. 22, Ch. 178, L. 1933.

79 C.J.S. Schools and School Districts § 347.

Schools and School Districts 95(2).

75-4532. (1263.23) Account of warrants—insufficient appropriation—notice to clerk of exhaustion of appropriation. (1) Immediately on receiving the duplicate of any warrant issued by any school district for high

school purposes, or by a county high school, the county treasurer shall enter in the high school account of such district or county high school under the proper item of appropriation, the amount of such warrant and the number thereof, so that each item of appropriation will at all times show the amount of the unexpended appropriation made therefor in the final budget.

- (2) Whenever the high school account of any school district, or of a county high school, shows that the amount appropriated for any item by the final budget has been exhausted, or that the amount for which any warrant has been drawn is greater than the unexpended balance appropriated for such item, the treasurer must note such fact on the account when entering the amount of such warrant in such account, and must not pay the original warrant, or register the same, when presented to him, but he shall endorse across the face thereof the "Payment and Registration Refused Account Insufficient Appropriation" and return the same to the person presenting it for payment or registration.
- (3) Whenever it appears to the county treasurer, after entering the amount of any warrant in the high school account of any school district, or county high school that the item appropriation against which the warrant is issued is so nearly exhausted that the issuance of any additional warrant or warrants against the same will exhaust or exceed such appropriation, the treasurer shall immediately notify the clerk of the school district, or county high school, of such condition and no warrant must thereafter be issued by such clerk against such appropriation item which will exceed the unexpended balance of the appropriation therefor.

History: En. Sec. 23, Ch. 178, L. 1933.

79 C.J.S. Schools and School Districts § 350.

Collateral References

Schools and School Districts 95(4).

75-4533. (1263.24) Budget supervisors for joint school districts. When a joint school district maintains high school in only one county the county superintendent of schools, the board of school budget supervisors and the county treasurer of such county shall be the superintendent, budget board and county treasurer to perform the duties imposed by this act with reference to high school budgets and accounts for such joint district. When high schools of a joint district are maintained in more than one county the county superintendent of schools, board of school budget supervisors, and county treasurer of the county to perform the duties imposed by this act with reference to the high school budgets and accounts of the joint district shall be designated by the state superintendent of public instruction. High school budgets for joint school districts shall be filed with the county superintendent of each county in which any part of such joint school district is situated.

The county treasurer for the joint district, as herein determined, shall be the county treasurer to receive any disbursements of state funds made for the high school of the joint district in accordance with the laws of the state.

History: En. Sec. 24, Ch. 178, L. 1933; amd. Sec. 5, Ch. 151, L. 1961.

75-4534 SCHOOLS

75-4534. (1263.25) Determination of amount of budget in joint districts—apportionment. As soon as the preliminary high school budget for a joint district is filed with the county superintendents of all counties in which any part of such joint district is situated, the county superintendents of all such counties must, either by correspondence, meetings, or in some other manner, ascertain and determine the number of mills which should be levied in such joint district for each fund of the high school budget for which a levy is to be made. After ascertaining and determining the number of mills which should be levied for each such fund, in the manner herein provided, all such county superintendents of schools shall make and sign a joint statement, addressed to the board of county commissioners of each county in which a part of the joint school district is situated, setting forth the number of mills which should be levied for each fund, as so ascertained and determined by such county superintendents, by the boards of county commissioners of such counties, and shall deliver or transmit one copy of such statement to each such board of county commissioners not later than the Saturday immediately preceding the second Monday in August.

The number of mills which should be levied on all the property in such joint district for each tax-supported fund of the high school budget shall be determined in accordance with the general laws pertaining to tax levies for high schools, provided that the following exceptions to general financing procedures shall be made:

- In the general fund budget and solely for the purpose of determining the amounts of county equalization aid to be allocated to the joint district for its high school foundation program, the total high school foundation program amount of the joint district shall be considered as consisting of as many separate foundation programs as there are counties in which any portion of the joint district is situated. The amount of each such separate foundation program shall bear to the total amount of the foundation program the same relationship that the number of ANB pupils in the joint district residing in each such county bears to the total ANB of the high school of the joint district. The amount of county equalization aid to be allocated to such separate foundation program shall be determined in accordance with the provisions of section 75-3618. Following the determination of the amount of county equalization aid from each county in which any portion of the joint district is situated, the separate foundation programs shall be combined into the total high school foundation program of the joint district, and the remaining requirements of such total foundation program and general fund budget shall be financed in accordance with the general laws pertaining to budgets and tax levies for high schools.
- (b) In the transportation fund budget and solely for the purpose of apportioning among the counties wherein any portion of the joint district is situated the amount of county reimbursement for high school transportation to be allocated to the joint district, the obligation for the total amount of such county reimbursement shall be distributed among such counties in the same proportion as the ANB of the high school of the joint district is distributed by residence in each such county.

(c) In the retirement fund budget and solely for the purpose of apportioning among the counties wherein any portion of the joint district is situated the obligation for the amount of county revenue for high school retirement fund purposes to be raised for the high school of the joint district, the total amount required to be raised for the high school retirement fund of the joint district shall be distributed among such counties in the same proportion as the ANB of the high school of the joint district is distributed by residence in each such county.

History: En. Sec. 25, Ch. 178, L. 1933; amd. Sec. 4, Ch. 182, L. 1951; amd. Sec. 6, Ch. 151, L. 1961.

75-4535. (1263.26) Apportionment between counties of tax for joint districts. The board of county commissioners of each county in which any part of a joint school district is situated, shall fix the tax levy for each fund of the budget of any high school of the joint district at the number of mills for each such levy recommended by the county superintendent of schools in such joint statement. Such board of county commissioners shall, at the time of fixing the county tax levy for high school transportation and the county tax levy for high school retirement fund purposes, for all the high schools within the county, include in the amounts to be raised by county levies such amounts as are required for the high school budget of the joint district, as recommended by the county superintendent of schools.

History: En. Sec. 26, Ch. 178, L. 1933; amd. Sec. 5, Ch. 182, L. 1951; amd. Sec. 7, Ch. 151, L. 1961.

75-4536. (1263.27) Repealed—Chapter 151, Laws of 1961.

Repeal relating to apportionment of tax proceeds, was repealed by Sec. 8, Ch. 151, Laws 1961.

75-4537. (1263.28) County treasurers to transmit funds to county keeping budget and accounts. The county treasurer of each county in which any part of a joint school district, maintaining a high school, or high schools, is situated, shall, on the fifteenth day of December in each year, and at the end of every three (3) months thereafter, transmit all moneys in his possession belonging to such joint school district, to the county treasurer of the county required to keep the budget and high school accounts of the joint district.

History: En. Sec. 28, Ch. 178, L. 1933.

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75-4538. (1263.29) Care and disbursement of moneys. The moneys apportioned to or received by any school district or county high school under the provisions of this act shall be held by the county treasurer of the county to the credit of the school district or county high school as its high school fund and separate and distinct from all other public moneys, and disbursements therefrom shall be made for high school purposes only by warrant as provided in sections 75-4531 and 75-4532.

History: En. Sec. 29, Ch. 178, L. 1933.

78 C.J.S. Schools and School Districts § 19.

Collateral References

Schools and School Districts 18.

75-4539. (1263.30) Repealed—Chapter 199, Laws of 1949.

Repeal

This section (Sec. 30, Ch. 178, L. 1933), authorizing the issuance of warrants prior to the distribution of funds, was repealed

as Sec. 1263.30, Revised Codes, 1935, by Sec. 24, Ch. 199, Laws 1949, effective June 1, 1949.

75-4540. (1263.31) Enforcement of provisions—forms to be furnished —use of forms. The state superintendent of public instruction shall have general supervision over the enforcement of the provisions of this act, and shall have the power and it shall be the duty of such superintendent to adopt and promulgate suitable and proper rules and regulations to secure such enforcement and to require compliance therewith. Such superintendent shall, whenever it is deemed necessary to secure proper enforcement of the provisions of this act, make such changes as may be deemed necessary in any of the forms or statements contained in this act, and shall furnish each county superintendent with a copy of all such forms and statements, and it shall be the duty of each county superintendent to cause a sufficient number of such forms to be printed for use in the county. Every county high school and school district maintaining a high school shall use the forms prescribed herein, or as changed by the state superintendent of public instruction; provided that if any such school district or county high school desires to use any form more fully itemized than the corresponding form contained herein, the same may be so used upon obtaining the approval and consent of such superintendent.

History: En. Sec. 31, Ch. 178, L. 1933.

## CHAPTER 46

#### HIGH SCHOOL DISTRICTS—PUBLIC WORKS

Section 75-4601. High school trustees may undertake public works program—additional trustees—division of taxable valuation—commencement of proceedings.

75-4602. Commission may divide county into high school districts.

75-4603. Bonds may be issued by trustees.

75-4604. Laws applicable to bonds.

75-4605. Construction of act.

75-4606. Act not applicable to certain high school districts. 75-4607. Alteration of boundaries—redivision—limitation.

75-4608. Repealed.

75-4609. Special tax levy—election.

75-4610. Notice and conduct of election.

75-4611. Approval of tax—other special levies not submitted.

75-4601. High school trustees may undertake public works program—additional trustees—division of taxable valuation—commencement of proceedings. In any county having a high school the board of trustees of the county high school, if there be one, and the boards of trustees of any school districts maintaining district high schools, are hereby designated

as the boards of trustees of the respective high school districts established under this act, provided that additional members may be elected to the board of trustees of districts maintaining district high schools in the number and manner as follows: When a majority of the boards of the common school districts in the high school district so request. Such requests shall be directed to the county superintendent of schools, who shall proceed as directed in this act.

The taxable valuation of the district in which the high school is located shall be divided by the number of trustees on the high school board. In the case of a first class district this number shall be seven (7), for a second class district five (5), and for a third class district three (3). This figure obtained shall then be divided into the remaining valuation of the high school district, and the resulting number, to the closest whole number, shall be the number of additional board members to be elected; provided, that the number of these additional board members shall not exceed four (4) in districts of the first and second class or two (2) in districts of the third class.

- (a) The additional members elected to the board of trustees of districts maintaining high schools shall be elected at a meeting of the trustees of all of the boards of trustees of the common school districts included within the boundaries of the high school district, which meeting shall be held on the fourth Saturday in April beginning with the year 1951. The members so elected shall hold office for a term of three (3) years and such meetings and elections shall be held every third year after the first meeting. The state superintendent of public instruction shall make all necessary rules and regulations for the conduct of said meeting and it shall be the duty of the county superintendent of schools to give written notice of the meetings by registered mail to each trustee not less than seven (7) days before such meeting. The additional trustees elected shall be elected from the trustees of the common school districts included within the high school district with the exception of the membership of the board of trustees of the school districts maintaining high schools.
- (b) The additional members elected to the board of trustees of districts maintaining high schools, shall take office immediately after qualifying and shall participate on an equal basis with other members in all business transacted by the board of trustees pertaining to the high school maintained by said districts. Said additional elected members shall be entitled to vote on the selection of the district superintendent of schools.

To effectuate the purpose of this act, the board of trustees of any high school district, as herein provided for, is hereby authorized to undertake a program of public works in the construction, improvement or repair of buildings, furnishing and equipping the same and purchasing the necessary land therefor, for the use of any or all high schools in such high school district, and to accept funds from the United States, its instrumentalities or any of its agencies in aid of any one or more of such purposes. Such proceedings may be commenced by resolution upon the part of such board of trustees of such high school district of its own motion and without any petition being filed therefor, such proceedings may also be commenced on petition of thirty per cent (30%) of the qualified electors

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of the high school district. Upon presentation of this petition to the high school district board of trustees, the latter shall, within sixty (60) days take steps to present the matter asked for in the petition to a vote of the people of the high school district.

History: En. Sec. 1, Ch. 275, L. 1947; amd. Sec. 1, Ch. 188, L. 1951; amd. Sec. 1, Ch. 67, L. 1957; amd. Sec. 1, Ch. 167, L. 1959.

#### Cross-Reference

For constitutionality of this act see notes to sec. 75-4603. Rankin v. Love, 125 M 184, 232 P 2d 998; Wright v. Browning High School District, 125 M 495, 240 P 2d 862.

#### Constitutionality

This section does not deprive persons of their property without due process of law just because the section designates who shall be board of trustees rather than having them elected by the qualified electors of the entire building district. Unless the constitution provides otherwise, the legislature may provide for the choosing of the

board of trustees of a school district as it sees fit. Lorang v. High School District "C" of Cascade County, 126 M 204, 247 P 2d 477, 478, 479.

This section is not a special law contrary to sec. 26, Art. V of the Montana Constitution. The law is general in its application and the classification made by it is reasonable in the light of the purpose, which is limited to the construction, repair, improvement and equipment of buildings only. Lorang v. High School District "C" of Cascade County, 126 M 204, 247 P 2d 477, 478, 479.

#### References

Habel v. High School District "C" of Cascade County, 129 M 588, 292 P 2d 349, 351.

#### DECISIONS UNDER FORMER LAW

# Consolidation of High Schools—Extent of Power

Under Ch. 47, Ex. Laws 1933 (sections 1301.1 to 1301.6, R. C. M. 1935), a school district maintaining only a two-year high school course may properly be consolidated with a district maintaining a complete course, the legislature, whenever referring to high schools in the act, evidently having in contemplation only those maintaining such a course. Pierson v. Hendricksen, 98 M 244, 253, 38 P 2d 991.

#### Constitutionality

Chapter 47, Ex. Laws 1933 (sections 1301.1 to 1301.6, R. C. M. 1935) was constitutional. Pierson v. Hendricksen, 98 M 244, 250, 38 P 2d 991.

Sections 1301.1 to 1301.6, R. C. M. 1935, inclusive, since repealed, were constitutional under Art. IV, sec. 1; Art. V, secs. 1, 25, 26, 36, and Art. III, sec. 27 of the Montana State Constitution. State ex rel. Berthot v. Gallatin County High School District, 102 M 356, 58 P 2d 264.

75-4602. Commission may divide county into high school districts. In all counties having a high school, or high schools, a commission consisting of the county commissioners and the county superintendent of schools shall at the request of any high school board of trustees in the county, divide the entire county into and establish one (1) or more high school districts for the purpose of this act, after hearing; provided, that each high school district so formed must have one (1) or more operating, accredited high schools within its boundaries; provided, further, that both parts of a joint district maintaining a high school may be considered as maintaining an operating high school, and as such each part of the joint district may, together with one (1) or more adjacent common school districts whose pupils attend the high school in the joint district, be set aside as a high school district. Provided, that, such resulting high school district in the county where the joint district high school is not located, shall be responsible for its share of the joint district high school budgets as is arrived at by following the procedure outlined in section 75-4534, and shall also be considered as a single high school district with the high school district of the joint district, wherein the high school is located for purposes of bonding as provided in sections 75-4601 to 75-4605, and also for purposes of selecting additional trustees as provided for in section 75-4601. That the commission shall fix the time, date and place, and at such time, date and place hold a public hearing of the requested division of the county into high school districts, at which hearing any interested person may appear and be heard concerning the requested division. Written notice of such hearing shall be mailed by the county superintendent of schools to the chairman of each and every board of trustees of each and every school district in the county, and the chairman of the board of trustees of the county high school, stating the time, date and place of such public hearing, and shall be mailed not less than two (2) weeks preceding the date fixed for such hearing. The certificate of the county superintendent of schools filed with the commission reciting that said notices were mailed shall be conclusive.

The boundaries established by said commission shall be subject to the approval of the superintendent of public instruction.

If any high school district shall cease to have within its borders an operating, accredited high school, then it shall be the duty of the county superintendent of schools to consolidate and annex the common school districts comprising said high school district to one or more operating high school districts within a period of six (6) months after one (1) year of being declared nonoperating or nonaccredited; provided, that before said county superintendent of schools may declare such a consolidation and annexation, he shall give the board of trustees of each of the common school districts within said high school district proposed to be consolidated and annexed twenty (20) days' notice of his intention so to do.

In creating such districts the commission shall give primary consideration to the factor of convenience of the patrons of the several schools. Common school districts may be grouped for the purpose of this act and when practicable high school districts shall be made up of contiguous and adjacent common school districts but the commission must take into consideration the existence or nonexistence of obstacles of travel, such as mountains and rivers and existence or nonexistence of highways and distances to high school. No common school districts shall be divided for the purpose of this act but must be made a part of a high school district in its entirety, unless such division is approved and authorized by the voters of the common school district involved, at a special election held for that purpose and such division shall be on the basis of equal area, or as near thereto as practicable in relation to the geographical features of such district, provided that the entire portion of a joint school district within the county shall be included within a high school district, provided further that in the event twenty per cent (20%) of the voters of a common school district be dissatisfied with the proposed action of said commission in dividing into and establishing high school districts, or in the proposed action of the county superintendent in consolidating and annexing a common school district theretofore constituting a part of a high school district to an existing high school district, and shall within thirty (30) days after the giving of the notice heretofore required, file their written protest with said county superintendent, then said common school district or districts shall be by said county superintendent, or by said commission as the case may be, directed to hold a special election for the purpose of determining which high school district said district shall be annexed to or into which high school district said district shall be divided as hereinbefore provided, and the said superintendent or commission, as the case may be, shall be governed by the result of said election.

History: En. Sec. 2, Ch. 275, L. 1947; amd. Sec. 2, Ch. 188, L. 1951; amd. Sec. 1, Ch. 237, L. 1953; amd. Sec. 1, Ch. 236, L. 1955; amd. Sec. 9, Ch. 151, L. 1961.

#### Cross-Reference

For constitutionality of this act see notes to sec. 75-4603. Rankin v. Love, 125 M 184, 232 P 2d 998; Wright v. Browning High School District, 125 M 495, 240 P 2d 862.

75-4603. Bonds may be issued by trustees. Each high school district created under this chapter shall be a corporation separate from the common school districts included therein. The boards of trustees of high school districts established under this act are hereby vested with the power and authority to issue and negotiate bonds on the credit of the high school districts in conformity with and for any one or more of the purposes provided in section 75-3901, and to the full amount permitted by section 6 of article XIII of the state constitution, as amended.

History: En. Sec. 3, Ch. 275, L. 1947; amd. Sec. 1, Ch. 169, L. 1961.

#### Constitutionality

The legislature had authority to incorporate in this section the interpretation of the constitution that the high school district should be permitted the constitutional debt limit irrespective of the debt of the common school districts. House v. School District No. 4, 120 M 319, 184 P 2d 285, 289, overruled in Rankin v. Love, 125 M 184, 232 P 2d 998, 1001.

Chapter 275, Laws 1947 (75-4601 to 75-4606) held unconstitutional and invalid as contravening sec. 6, Art. XIII of the Montana Constitution as it was merely an attempt to expand the constitutional limit of indebtedness by pyramiding another tax unit upon the identical property and tax-payers of a school district. Rankin v. Love, 125 M 184, 232 P 2d 998, 1001. (See however, the dissenting opinion of two judges on this point on p. 1003.) This case

expressly overrules House v. School District No. 4, 120 M 319, 184 P 2d 285.

Chapter 275, Laws 1947 (75-4601 to 75-4606) is unconstitutional as decided in the Rankin case only in so far as it purported to authorize the high school district to incur indebtedness to the full amount permitted by the Constitution irrespective of the debts of the common school districts comprising the high school district. Such districts (high school) have the authority to issue bonds and incur indebtedness, so long as such indebtedness, when apportioned among the common school districts in proportion to the assessed valuation of the property in each and this part added to the existing indebtedness of the common school districts respectively, did not bring the debt of any of the latter in excess of the limit prescribed by sec. 6, Art. XIII of the Montana Constitution. Wright v. Browning High School District, 125 M 495, 240 P 2d 862, 863.

75-4604. Laws applicable to bonds. All of the laws of this state governing the issuance, refunding and sale of bonds by school districts, the levying of taxes for the payment of the principal and interest thereof and payment and redemption thereof, in so far as the same are applicable and not in conflict with any of the provisions of this act, shall apply to and govern all bonds issued under the provisions of this act.

History: En. Sec. 4, Ch. 275, L. 1947.

## Cross-Reference

For constitutionality of this act see

notes to sec. 75-4603. Rankin v. Love, 125 M 184, 232 P 2d 998; Wright v. Browning High School District, 125 M 495, 240 P 2d 862.

75-4605. Construction of act. This act shall not prevent the exercise of powers as elsewhere in the statutes of this state provided. It shall con-

stitute an additional and cumulative method of borrowing money and of carrying out the powers herein authorized. The high school districts created under the provisions of this act, are for construction, repair, improvement, and equipment purposes only, and it shall not be construed so as to interfere with or repeal any existing laws relating to the maintenance or operation of high schools within the county. All high school districts heretofore created under the provisions of sections 1301.1 to 1301.6, inclusive, of the Revised Codes of Montana, 1935, and chapter 275, Laws of 1947, and amendments thereof, are hereby recognized as legally organized high school districts with full powers under this act.

History: En. Sec. 5, Ch. 275, L. 1947; amd. Sec. 3, Ch. 188, L. 1951.

NOTE.—Sections 1301.1 to 1301.6, Revised Codes of Montana, 1935, referred to above, were repealed by Sec. 7, Ch. 275, Laws 1947. Chapter 275, Laws of 1947, is compiled as secs. 75-4601 to 75-4606.

#### Cross-Reference

For constitutionality of this act see notes to sec. 75-4603. Rankin v. Love, 125 M 184, 232 P 2d 998; Wright v. Browning High School District, 125 M 495, 240 P 2d 862.

75-4606. Act not applicable to certain high school districts. Provided, that nothing in this act shall apply to any high school districts in a county having a population of forty-five thousand (45,000) or over, based on the United States census of 1930.

History: En. Sec. 6, Ch. 275, L. 1947.

Cross-Reference

For constitutionality of this act see

notes to sec. 75-4603. Rankin v. Love, 125 M 184, 232 P 2d 998; Wright v. Browning High School District, 125 M 495, 240 P 2d 862.

75-4607. Alteration of boundaries—redivision—limitation. In any county which has been divided into high school building districts, at the request of any high school board of trustees, the commission, provided for in section 75-4602, may, in accord with the procedure provided in said section, alter the boundaries of said districts or redivide the county into a different number of high school districts, provided that such alteration or redivision may not be done within three (3) years from the original division or the last alteration of boundaries and last redivision.

History: En. Sec. 1, Ch. 130, L. 1949; amd. Sec. 1, Ch. 120, L. 1953.

#### Collateral References

Schools and School Districts 32.
78 C.J.S. Schools and School Districts
35.

# 75-4608. Repealed—Chapter 120, Laws of 1953.

#### Repeal

This section (Sec. 2, Ch. 130, L. 1949), apparently was repealed by Ch. 120, Laws 1953. The title of Ch. 120, Laws 1953, provided for the repeal of section 2 of Ch. 130, Laws 1949 and the body of the

1953 act, though it did not specifically repeal section 2 of the 1949 act, did, in the course of amending the entire 1949 act, omit the original section 2 (this section) and renumber the succeeding sections.

75-4609. Special tax levy—election. Whenever the board of trustees of the local school district within which the high school is situated shall deem it necessary to raise money for high school purposes in addition to its revenues from county and state apportionments, a meeting of the board of trustees of the high school district shall be called and held to consider the calling of an election to vote upon the question of approving a special levy for high school purposes. If a majority of the board of trus-

tees, as provided in section 75-4601, of the high school district attending such meeting shall determine that the proposed expenditures are necessary for the purposes of, altering, repairing or enlarging any high school or high schools of said district or for proper maintenance and operation of the high schools of said district or for acquisition of land for high school purposes, said trustees of the high school district shall ascertain and determine the number of mills required to be raised by special levy, and shall call an election for the purpose of submitting the question of making such additional levy to the qualified electors who are taxpayers upon property within the high school district, and if approved by a majority vote of all the taxpayers voting at such election, the result of said election shall be certified to the board of county commissioners, and the levy approved by such majority vote shall be made upon all property within said high school district.

History: En. Sec. 3, Ch. 130, L. 1949; amd. Sec. 1, Ch. 120, L. 1953; amd. Sec. 1, Ch. 147, L. 1959; amd. Sec. 1, Ch. 163, L. 1961.

#### Collateral References

Schools and School Districts 103(2). 79 C.J.S. Schools and School Districts \$ 379.

75-4610. Notice and conduct of election. Notice of such election shall be given and said election shall be held and conducted in all respects in the manner provided by sections 75-3802, 75-3803, 75-3804, 75-3805. Said election shall be conducted by judges and clerks of election appointed by the high school board of trustees from the residents of each respective common school district within the high school district in which the board determines what polling places shall be provided; provided that convenience to voters shall be a determining factor in selecting these polling places.

History: En. Sec. 4, Ch. 130, L. 1949; amd. Sec. 1, Ch. 120, L. 1953.

## Collateral References

Schools and School Districts 103(2). 79 C.J.S. Schools and School Districts 379

75-4611. Approval of tax—other special levies not submitted. In the event such additional levy is approved by a majority vote of all of the tax-payers voting at said election, no other special tax for the operation and maintenance of the high school may in the same year be submitted to a vote of the taxpayers within the local school district wherein such high school is situated.

History: En. Sec. 5, Ch. 130, L. 1949; re-en. Sec. 1, Ch. 120, L. 1953.

#### Collateral References

Schools and School Districts 103(2). 79 C.J.S. Schools and School Districts 379.

## CHAPTER 47

## DEFINITIONS AND GENERAL PROVISIONS

Section 75-4701. Gender.

75-4702. Fines and penalties.

75-4703. Printing and binding.

75-4704. School officers not to act as agents.

75-4705. Oath of office.

75-4706. Oath required of persons applying for teaching positions. 75-4707. Oath required of instructors in state educational institutions.

75-4708. Duty of county attorney.

75-4709. Penalties.

75-4701. (1323) Gender. Whenever the word "he" or "his" occurs in this title, referring either to the members of the board of trustees, county superintendent, teachers, school officers, or children, it shall be understood to mean also "she" or "her."

History: En. Sec. 2200, Ch. 76, L. 1913; re-en. Sec. 1323, R. C. M. 1921.

NOTE.—The word "title" is retained in sections 75-4701 to 75-4709 as referring to the entire body of law originally enacted as chapter 76, Laws of 1913. Collateral References Statutes 199. 82 C.J.S. Statutes § 338.

75-4702. (1324) Fines and penalties. All fines and penalties not otherwise provided for in this title, shall be collected by an action in any court of competent jurisdiction, and shall be paid into the county school fund immediately after collection.

History: En. Sec. 2201, Ch. 76, L. 1913; re-en. Sec. 1324, R. C. M. 1921.

NOTE.—The word "title" is retained in this section as referring to the entire body of law originally enacted as chapter 76, Laws of 1913.

Collateral References Penalties 16 et seq. 70 C.J.S. Penalties § 8.

75-4703. (1325) Printing and binding. All printing and binding required under this title shall be executed in the form and manner, and at a price not exceeding other county printing, and shall be paid in like manner out of the general school fund.

History: En. Sec. 2202, Ch. 76, L. 1913; re-en. Sec. 1325, R. C. M. 1921.

NOTE.—The word "title" is retained in this section as referring to the entire body of law originally enacted as chapter 76, Laws of 1913. Collateral References Counties 113(4). 20 C.J.S. Counties §§ 175, 179.

75-4704. (1326) School officers not to act as agents. Neither the superintendent of public instruction nor any person in his office, nor any county superintendent, nor school district officer, nor any officer or teacher connected with any public school, shall act as agent or solicitor for the sale of any schoolbooks, maps, charts, school library books, school furniture, or apparatus, or furnish any assistance to, or receive any reward therefor, from any author, publisher, bookseller, or dealer, doing the same. Every person violating this section shall be deemed guilty of a misdemeanor, and be liable to a fine of not less than fifty nor more than two hundred dollars for each offense, and shall be liable to removal from office therefor.

History: En. Sec. 2025, Pol. C. 1895; re-en. Sec. 1041, Rev. C. 1907; re-en. Sec. 2203, Ch. 76, L. 1913; re-en. Sec. 1326, R. C. M. 1921.

#### Collateral References

Schools and School Districts \$\infty\$47, 48(8), 63(3), 147. 78 C.J.S. Schools and School Districts

§§ 86, 100, 127, 238.

(1327) Oath of office. Any person elected or appointed to any office mentioned in this title shall, before entering upon the discharge of the duties thereof, take the oath of office. In case such officer has a written appointment or commission, his oath shall be endorsed thereon; otherwise it may be taken orally; in either case it may be sworn to before any officer

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authorized to administer all oaths relative to school business appertaining to their respective offices, without charge or fee.

History: En. Sec. 2026, Pol. C. 1895; re-en. Sec. 1042, Rev. C. 1907; re-en. Sec. 2205, Ch. 76, L. 1913; re-en. Sec. 1327, R. C. M. 1921.

NOTE.—The word "title" is retained in this section as referring to the entire body of law originally enacted as chapter 76, Laws of 1913, Collateral References Officers©=36(1). 67 C.J.S. Officers § 38.

Validity of governmental requirement of oath of allegiance or loyalty as applied to school officers. 18 ALR 2d 319.

75-4706. (1327.1) Oath required of persons applying for teaching positions. Every person who applies for a contract, or any renewal thereof, to teach in any of the public schools of this state, shall subscribe to the following oath or affirmation before some officer authorized by law to administer oaths:

"I solemnly swear (or affirm) that I will support the constitution of the United States of America, the constitution of the state of Montana and the laws of the United States and the state of Montana, and will, by precept and example, promote respect for the flag and the institutions of the United States and the state of Montana, reverence for law and order and undivided allegiance to the government of the United States of America."

Such oath or affirmation shall be executed in duplicate and one copy thereof shall be filed with the state superintendent of public instruction at the time when the application for a license is made, and the other copy shall be retained by the person who subscribed to such oath or affirmation. No such contract shall be entered into, or be effective, unless such oath shall have been filed.

History: En. Sec. 1, Ch. 19, L. 1931.

# Collateral References

Schools and School Districts 135(3). 78 C.J.S. Schools and School Districts 187.

Validity of governmental requirement of oath of allegiance or loyalty as applied to schoolteachers. 18 ALR 2d 319.

Dismissal or rejection of public school-teacher because of disloyalty. 27 ALR 2d 487.

75-4707. (1327.2) Oath required of instructors in state educational institutions. Every professor, instructor or teacher who shall hereafter be employed by any university, normal school or college in this state which is supported in whole or in part by public funds, shall, before entering upon the discharge of his or her duties, subscribe to the oath or affirmation as prescribed in section 75-4706 before some officer authorized by law to administer oaths. Such oath or affirmation shall be executed in duplicate and one copy thereof shall be filed with the president of such university, normal school or college, and one copy shall be retained by the person who subscribed to such oath or affirmation; provided, however, the above requirement shall not apply to exchange professors or temporary employees.

History: En. Sec. 2, Ch. 19, L. 1931.

#### References

Peterson v. Fugle, 96 M 537, 542, 31 P 2d 1030.

#### Collateral References

Colleges and Universities \$\sime 8.
14 C.J.S. Colleges and Universities \$\sime 21-3.

75-4708. (1328) Duty of county attorney. The county attorney shall be the legal adviser of the county superintendent and all school trustees, and shall prosecute and defend all suits to which a district may be a party.

History: En. Sec. 2027, Pol. C. 1895; re-en. Sec. 1043, Rev. C. 1907; re-en. Sec. 2206, Ch. 76, L. 1913; re-en. Sec. 1328, R. C. M. 1921.

## Collateral References

District and Prosecuting Attorneys 7 (1), 9.

27 C.J.S. District and Prosecuting Attorneys §§ 12(1), 12(2), 15(1).

75-4709. (1329) Penalties. Any person who shall violate any provisions of this title shall be deemed guilty of a misdemeanor (when not otherwise provided in this title), and upon a conviction thereof shall be fined in a sum not less than twenty dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than five days nor more than thirty days, or by both such fine and imprisonment.

History: En. Sec. 2028, Pol. C. 1895; re-en. Sec. 1044, Rev. C. 1907; re-en. Sec. 2207, Ch. 76, L. 1913; re-en. Sec. 1329, R. C. M. 1921.

R. C. M. 1921.

NOTE.—The word "title" is retained in this section as referring to the entire

body of law originally enacted as chapter 76, Laws of 1913.

#### Collateral References

Criminal Law 27.

22 C.J.S. Criminal Law §§ 6, 7.

# CHAPTER 48

## SCHOOL LUNCH PROGRAM

Section 75-4801. Definitions.

75-4802. Expenditure of federal funds. 75-4803. Administration of program.

75-4804. Reversion of funds advanced.

75-4805. Authority of school board. 75-4806. Accounts, records, reports and operations.

75-4800. Studies, appraisals and reports to governor. 75-4808. State board of education—report to—authority.

75-4809. Allocation of funds to provide lunches for federally connected indigent children.

# 75-4801. Definitions. For the purpose of this act:

(a) "School board" means any board of trustees of any public school, grade or high school, of any school district in the state of Montana.

(b) "School" means any public school of grade or high school level in the state of Montana.

(e) "School lunch program" means a program under which lunches are served by any school in this state on a nonprofit basis to children in attendance, including any such program under which a school receives assistance out of funds appropriated by the Congress of the United States.

History: En. Sec. 1, Ch. 282, L. 1947.

75-4802. Expenditure of federal funds. The superintendent of public instruction is hereby authorized to accept and direct the disbursement of funds appropriated by act of Congress and apportioned to the state for use in connection with school lunch programs, under the "National School Lunch Act," approved June 4, 1946 (Public Law 396, 79th Congress, Chapter 281, 2nd Session), and any amendments thereto. The superintendent of public instruction shall deposit all such funds received from the federal

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government in a special account with the treasurer of the state, who shall make disbursements therefrom upon the direction of the superintendent of public instruction.

History: En. Sec. 2, Ch. 282, L. 1947.

Compiler's Note

Public Law 396 of the 79th Congress,

Chapter 281, 2nd Session, referred to above, is compiled as sections 1751 to 1760,

Title 42, U. S. Code.

75-4803. Administration of program. The superintendent of public instruction may enter into such agreements with any agency of the federal government, with any school board, or with any other agency or person, prescribe such regulations, employ such personnel, and take such other action, as he may deem necessary to provide for the establishment, maintenance, operation, and expansion of any school lunch program, and to direct the disbursement of federal and state funds in accordance with any applicable provisions of federal or state law. The superintendent of public instruction may give technical advice and assistance to any school board in connection with the establishment and operation of any school lunch program and may assist in training personnel engaged in the operation of such program. The superintendent of public instruction and any school board may accept any gift for use in connection with any school lunch program.

History: En. Sec. 3, Ch. 282, L. 1947.

75-4804. Reversion of funds advanced. Any funds advanced by the superintendent of public instruction from state appropriated funds for operational or administrative costs or expenditures necessary to fulfill contracts with any federal agency or any school board, which are reimbursable by the federal agency or the school board under this act shall when so reimbursed revert to the fund from which the original payment was made.

History: En. Sec. 4, Ch. 282, L. 1947.

75-4805. Authority of school board. Any school board of any school is authorized to enter into contracts with the superintendent of public instruction for the purpose of obtaining funds, supplies and equipment, and facilities necessary to the establishment, operation and maintenance of a school lunch program in such school, and to operate or provide for the operation of school lunch programs in schools under their jurisdiction by using therefor funds disbursed to them under the provisions of this act. gifts and other funds received from sale of lunches under such programs, all in accordance with regulations prescribed by the superintendent of public instruction.

History: En. Sec. 5, Ch. 282, L. 1947.

75-4806. Accounts, records, reports and operations. The superintendent of public instruction shall prescribe regulations for the keeping of accounts and records and the making of reports by or under the supervision of school Such accounts and records shall at all times be available for inspection and audit by authorized officials and shall be preserved for such period of time, not in excess of five (5) years, as the superintendent of public instruction may lawfully prescribe. The superintendent of public instruction shall conduct or cause to be conducted such audits, inspections,

and administrative reviews of accounts, records, and operations with respect to school lunch programs as may be necessary to determine whether its agreements with school boards and regulations made pursuant to this act are being complied with, and to insure that school lunch programs are effectively administered.

History: En. Sec. 6, Ch. 282, L. 1947.

75-4807. Studies, appraisals and reports to governor. The superintendent of public instruction is hereby authorized, to the extent that funds are available for that purpose, and in co-operation with other appropriate agencies and organizations to conduct studies of methods of improving and expanding school lunch programs and promoting nutritional education in the schools, to conduct appraisals of the nutritive benefits of school lunch programs, and to report his findings and recommendations from time to time to the governor.

History: En. Sec. 7, Ch. 282, L. 1947.

75-4808. State board of education—report to—authority. The superintendent of public instruction shall report quarterly, in writing, at the regular quarterly meetings of the state board of education, on all phases of the school lunch program, including financial, administrative and operational phases and on such other matters as should be brought to the attention of said board; and the state board of education shall have authority to direct any change, alteration or modification in the school lunch program not inconsistent with the National School Lunch Act.

History: En. Sec. 8, Ch. 282, L. 1947.

- 75-4809. Allocation of funds to provide lunches for federally connected indigent children. The board of trustees of any organized and legal school district in the state of Montana may, in their discretion request the allocation of a portion of its funds from the federal reimbursement in lieu of taxes to the school lunch budget to provide school lunches for federally connected indigent enrolled school pupils who are a part of the programs when such indigent pupils are declared eligible in the following manner:
- (a) The indigency must be certified by the county department of welfare, assisted by a committee of three (3) composed of the county superintendent of schools, the county health department and a school district authorized representative and the board of trustees.
- (b) The amount allocated to the school district lunch budget shall be based on certified claims filed with the county superintendent of schools by the board of trustees of the school district and approved by his office as a legal claim complying with this act and certifying: (1) that the names of the children have been approved as indigent in subparagraph (a) of this act. (2) The number of days that school district has provided free lunch to each indigent child. (3) The price charged the non-indigent pupils per day for lunch. (4) The claim amounts to the total number of days in item two (2) multiplied by the price per meal in item three (3) of this act.

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(c) The county treasurer must allocate a portion of the federal reimbursement in lieu of taxes to the school district lunch fund to cover the amount of this approved claim.

History: En. Sec. 1, Ch. 209, L. 1961.

# CHAPTER 49

#### WESTERN REGIONAL HIGHER EDUCATION COMPACT

Section 75-4901. Western regional higher education compact approved. 75-4902. Effective date—notice of approval.

75-4901. Western regional higher education compact approved. The legislative assembly of the state of Montana hereby approves, ratifies and adopts the "Western Regional Higher Education Compact" approved by the Western Governors' Conference meeting at Denver, Colorado, on November tenth, 1950, which compact is as follows:

## WESTERN REGIONAL HIGHER EDUCATION COMPACT

# ARTICLE I

WHEREAS, the future of this nation and of the western states is dependent upon the quality of the education of its youth; and

WHEREAS, many of the western states individually do not have sufficient numbers of potential students to warrant the establishment and maintenance within their borders of adequate facilities in all of the essential fields of technical, professional, and graduate training, nor do all of the states have the financial ability to furnish within their borders institutions capable of providing acceptable standards of training in all of the fields mentioned above; and

WHEREAS, it is believed that the western states, or groups of such states within the region, co-operatively can provide acceptable and efficient educational facilities to meet the needs of the region and of the students thereof;

NOW, THEREFORE, the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming, and the territories of Alaska and Hawaii do hereby covenant and agree as follows:

#### ARTICLE II

Each of the compacting states and territories pledges to each of the other compacting states and territories faithful co-operation in carrying out all the purposes of this compact.

#### ARTICLE III

The compacting states and territories hereby create the Western Interstate Commission for Higher Education, hereinafter called the commission. Said commission shall be a body corporate of each compacting state and territory and an agency thereof. The commission shall have all the powers and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states and territories.

## ARTICLE IV

The commission shall consist of three (3) resident members from each compacting state or territory. At all times one (1) commissioner from each compacting state or territory shall be an educator engaged in the field of higher education in the state or territory from which he is appointed.

The commissioners from each state and territory shall be appointed by the governor thereof as provided by law in such state or territory. Any commissioner may be removed or suspended from office as provided by the law of the state or territory from which he shall have been appointed.

The terms of each commissioner shall be four (4) years; provided, however, that the first three (3) commissioners shall be appointed as follows: one (1) for two (2) years, one (1) for three (3) years, and one (1) for four (4) years. Each commissioner shall hold office until his successor shall be appointed and qualified. If any office becomes vacant for any reason, the governor shall appoint a commissioner to fill the office for the remainder of the unexpired term.

## ARTICLE V

Any business transacted at any meeting of the commission must be by affirmative vote of a majority of the whole number of compacting states and territories.

One or more commissioners from a majority of the compacting states and territories shall constitute a quorum for the transaction of business.

Each compacting state and territory represented at any meeting of the commission is entitled to one (1) vote.

## ARTICLE VI

The commission shall elect from its number a chairman and a vice-chairman, and may appoint, and at its pleasure dismiss or remove, such officers, agents, and employees as may be required to carry out the purpose of this compact; and shall fix and determine their duties, qualifications and compensation, having due regard for the importance of the responsibilities involved.

The commissioners shall serve without compensation, but shall be reimbursed for their actual and necessary expenses from the funds of the commission.

## ARTICLE VII

The commission shall adopt a seal and bylaws and shall adopt and promulgate rules and regulations for its management and control.

The commission may elect such committees as it deems necessary for the carrying out of its functions.

The commission shall establish and maintain an office within one of the compacting states for the transaction of its business and may meet 75-4901 SCHOOLS

at any time, but in any event must meet at least once a year. The chairman may call such additional meetings and upon the request of a majority of the commissioners of three or more compacting states or territories shall call additional meetings.

The commission shall submit a budget to the governor of each compacting state and territory at such time and for such period as may be required.

The commission shall, after negotiations with interested institutions, determine the cost of providing the facilities for graduate and professional education for use in its contractual agreements throughout the region.

On or before the fifteenth day of January of each year, the commission shall submit to the governors and legislatures of the compacting states and territories a report of its activities for the preceding calendar year.

The commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time for inspection by the governor of any compacting state or territory or his designated representative. The commission shall not be subject to the audit and accounting procedure of any of the compacting states or territories. The commission shall provide for an independent annual audit.

## ARTICLE VIII

It shall be the duty of the commission to enter into such contractual agreements with any institutions in the region offering graduate or professional education and with any of the compacting states or territories as may be required in the judgment of the commission to provide adequate service and facilities of graduate and professional education for the citizens of the respective compacting states or territories. The commission shall first endeavor to provide adequate services and facilities in the fields of dentistry, medicine, public health, and veterinary medicine, and may undertake similar activities in other professional and graduate fields.

For this purpose the commission may enter into contractual agreements:

- (a) With the governing authority of any educational institution in the region, or with any compacting state or territory, to provide such graduate or professional educational services upon terms and conditions to be agreed upon between contracting parties, and
- (b) With the governing authority of any educational institution in the region or with any compacting state or territory to assist in the placement of graduate or professional students in educational institutions in the region providing the desired services and facilities, upon such terms and conditions as the commission may prescribe.

It shall be the duty of the commission to undertake studies of needs for professional and graduate educational facilities in the region, the resources for meeting such needs, and the long-range effects of the compact on higher education; and from time to time to prepare comprehensive reports on such research for presentation to the Western Governors' Conference and to the legislatures of the compacting states and territories.

In conducting such studies, the commission may confer with any national or regional planning body which may be established. The commission shall draft and recommend to the governors of the various compacting states and territories, uniform legislation dealing with problems of higher education in the region.

For the purpose of this compact the word "region" shall be construed to mean the geographical limits of the several compacting states and territories.

## ARTICLE IX

The operating costs of the commission shall be apportioned equally among the compacting states and territories.

### ARTICLE X

This compact shall become operative and binding immediately as to those states and territories adopting it whenever five or more of the states or territories of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Alaska and Hawaii have duly adopted it prior to July 1, 1953. This compact shall become effective as to any additional states or territories adopting thereafter at the time of such adoption.

## ARTICLE XI

This compact may be terminated at any time by consent of a majority of the compacting states or territories. Consent shall be manifested by passage and signature in the usual manner of legislation expressing such consent by the legislature and governor of such terminating state. Any state or territory may at any time withdraw from this compact by means of appropriate legislation to that end. Such withdrawal shall not become effective until two (2) years after written notice thereof by the governor of the withdrawing state or territory accompanied by a certified copy of the requisite legislative action is received by the commission. Such withdrawal shall not relieve the withdrawing state or territory from its obligations hereunder accruing prior to the effective date of withdrawal. The withdrawing state or territory may rescind its action of withdrawal at any time within the two-year period. Thereafter, the withdrawing state or territory may be reinstated by application to and the approval by a majority vote of the commission.

#### ARTICLE XII

If any compacting state or territory shall at any time default in the performance of any of its obligations assumed or imposed in accordance with the provisions of this compact, all rights, privileges and benefits conferred by this compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the commission.

Unless such default shall be remedied within a period of two (2) years following the effective date of such default, this compact may be terminated with respect to such defaulting state or territory by affirmative vote of three-fourths of the other member states or territories.

Any such defaulting state may be reinstated by: (a) performing all acts and obligations upon which it has heretofore defaulted, and (b) application to and the approval by a majority vote of the commission.

History: En. Sec. 1. Ch. 216, L. 1951.

75-4902. Effective date—notice of approval. Said compact shall become operative and binding at the time provided and in accordance with Article X of said compact. The governor of Montana shall give notice of the approval, ratification and adoption of said compact by the thirtysecond legislative assembly of the state of Montana to the governors of each of the states and territories named in said Article X of said compact. The governors shall have power to appoint the commissioners for which provision is made in the compact and said commissioners shall have the power and authority specified in said compact and such other power and authority as may hereafter be prescribed by law.

History: En. Sec. 2. Ch. 216. L. 1951.

## CHAPTER 50

#### EDUCATION CLASSES FOR MENTALLY AND PHYSICALLY HANDICAPPED CHILDREN

Section 75-5001. Special education-mentally handicapped children-physically handicapped children.

75-5002. Courses of instruction—preparation—co-operation.

75-5003. Local boards of trustees—powers—determination of children requiring special education and the type of education responsibility of state superintendent-reimbursement by state-computation.

75-5004. Mentally handicapped children not to be deprived of school privileges without consent of state superintendent—notifying local welfare department and state training school of those excluded.

Petition of parents for establishment of special teaching program. 75-5005. Qualifications of teachers—medical, psychiatric, and psychological services—promotion, direction and supervision of special education—supervisor—agency for co-operation with other agencies—courses of study, size of classes, distances to be traveled. 75-5006.

75-5007. Supervisor—powers and duties.

75-5001. Special education—mentally handicapped children—physically handicapped children. Within the meaning of this act special education is that type of education requiring special facilities or instruction because of physical or mental deviation from the average on the part of some children. These handicapped are defined as follows:

(1) Mentally handicapped children are children who are not capable of profiting from the general educational program of the public schools. These children may be considered in three groups as follows: (a) Educable mentally handicapped. Those children who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected from an eleven-year-old, but not less than that of a seven-year-old. (b) Trainable mentally handicapped. Those children who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected of a seven-year-old and who, for entrance into a training program, are capable of walking, of clean bodily habits, and of obedience to simple commands. (c) Custodial mentally

handicapped. Those children who do not show a likelihood of attaining clean bodily habits, responsiveness to directions, or means of intelligible communication. The public schools are to assume responsibility for only the educable handicapped groups.

(2) Physically handicapped children are those children who are capable of profiting from the general education program of the public schools, but who need special equipment, special services, and transportation to compensate for such physical handicaps as cardiac, cerebral palsy, or other physical handicaps including inadequate hearing and vision, which makes them unable to profit from the normal education processes without some special provision. Nothing herein shall be construed to interfere with the purpose and function of the school for the deaf and blind in Great Falls.

History: En. Sec. 1, Ch. 206, L. 1955.

Collateral References

79 C.J.S. Schools and School Districts §§ 450, 484.

75-5002. Courses of instruction—preparation—co-operation. The state superintendent of public instruction, with assistance from the state board of health, and superintendent of the state training school, and with the approval of the state board of education, shall prepare courses of instruction in the discovery and education of the handicapped child.

The state superintendent of public instruction shall co-operate with the state board of health in the utilization of the board of health specialists in hearing, speech and physical defects, both on the state and local levels, and shall also utilize the Montana mental hygiene clinic and specialists at the state training school in determining the type of special instruction needed by mentally deficient children.

History: En. Sec. 2, Ch. 206, L. 1955.

75-5003. Local boards of trustees—powers—determination of children requiring special education and the type of education responsibility of state superintendent-reimbursement by state-computation. The board of trustees in each school district, when it appears that there are not less than ten (10) educable, mentally retarded or physically handicapped children in the district, must maintain special classes for educable mentally retarded children or for physically handicapped children, or may arrange to use the services of such approved mentally retarded or physically handicapped children's classes as may exist within the state, or may provide transportation services from home to school and return for all handicapped children enrolled in a state approved special education program of such ages at it deems wise; provided, that the local board has the right to exclude persons of low intelligence or severe delinquent behavior. The determination of the children requiring special education and the type of special education needed by these handicapped children shall not be the responsibility of local boards of trustees but shall be the responsibility of the state superintendent of public instruction in co-operation with appropriate medical, psychiatric and psychological advice listed above. Two (2) or more districts may combine to provide such educational facilities.

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Reimbursements on the part of the state for such programs shall be computed on the basis of counting each such mentally retarded child in such special classes as three (3) in average number belonging, and each physically handicapped child according to a schedule to be prepared by the state superintendent of public instruction, but in no case shall it be over three (3) average number belonging for each such child, prorated according to time and number in these special classes, or in home tutoring. Transportation reimbursements shall be made on a schedule arrived at by the state superintendent of public instruction, and such expenditures shall be added to the transportation budget of the district. The state shall reimburse two-thirds of such approved transportation and the county shall reimburse the remainder of such approved transportation according to said schedule.

Any child who is mentally retarded, or physically handicapped, or both, who is enrolled in a state-approved elementary school special education program which is maintained by a district other than the district in which such child resides, shall be included in the computation of average number belonging to the district maintaining the special education program, according to the provisions herein. The district in which such child resides shall pay to the district where such child attends an amount of tuition based on the tuition rates established in section 75-1630, and such payment shall be made in the manner prescribed by section 75-1630.

Any such child who is enrolled in a state-approved high school special education program which is maintained by a high school located in a county other than the county in which such child resides, shall be included in the computation of the average number belonging to the high school maintaining the special education program, according to the provisions herein. The county in which such child resides shall pay to the high school where such child attends an amount of tuition based on the tuition rates established in section 75-4230, and such payment shall be made in the manner prescribed by section 75-4230.

When children are sent to an institution supported solely by funds of the state of Montana the home district or county will not be required to pay tuition for such child.

History: En. Sec. 3, Ch. 206, L. 1955; amd. Sec. 1, Ch. 108, L. 1959; amd. Sec. 1, Ch. 41, L. 1961.

75-5004. Mentally handicapped children not to be deprived of school privileges without consent of state superintendent—notifying local welfare department and state training school of those excluded. No mentally handicapped child shall be deprived of school privileges except with the express approval of the state superintendent of public instruction, upon appropriate medical, psychiatric, or psychological advice. Each child so excluded shall be brought immediately to the attention of the local welfare department and of the proper authorities of the state training school who shall be charged with responsibility for providing adequate protection and care, in keeping with available facilities, so far as the parents are willing to accept such services.

History: En. Sec. 4, Ch. 206, L. 1955.

75-5005. Petition of parents for establishment of special teaching program. The parents or guardians of seven (7) or more mentally handicapped children of one (1) type, living in one (1) town or in neighboring towns, which children can be taught together, may petition the district board or boards of trustees for the establishment of a special teaching program. The district board or boards of trustees shall request the state board of education for such advice and assistance as the state board of education considers appropriate in the organization of such a program.

History: En. Sec. 5, Ch. 206, L. 1955.

75-5006. Qualifications of teachers—medical, psychiatric, and psychological services—promotion, direction and supervision of special education—supervisor—agency for co-operation with other agencies—courses of study, size of classes, distances to be traveled. The state superintendent of public instruction, with approval of the state board of education, shall establish by regulation the qualifications of persons appointed to teach mentally handicapped children. The state board of health shall provide qualified medical, psychiatric, and psychological services as needed to assist the state superintendent of public instruction in making diagnoses, recommending care, or passing upon the eligibility of children for admission to or discharge from special programs for mentally handicapped children.

The state superintendent of public instruction, with the assistance of the state board of health, and with approval of the state board of education, shall make provision for the proper promotion, direction and supervision of special education for mentally and physically handicapped children and shall provide necessary and adequate supervision and consultation for the purpose of carrying out this act and shall appoint a supervisor and specify his qualifications. The state superintendent of public instruction shall be the agency for co-operation and consultation with federal agencies, other agencies and private bodies on matters of public school education of mentally and physically handicapped children, reserving to other agencies their full responsibilities for other aspects of the care of such children. Courses of study, size of classes, adequacy of methods of instruction, the distances to be traveled to each school or class and the necessary equipment and special services for mentally and physically handicapped children shall comply with the requirements prescribed by the state board of education, which shall also have authority to make any other needful regulations to carry out the purposes of this act.

History: En. Sec. 6, Ch. 206, L. 1955.

75-5007. Supervisor—powers and duties. The duties of the supervisor, under direction of the state superintendent of public instruction, with assistance from the state board of health and superintendent of the state training school shall be to discover the child needing special education throughout the state by observation, examination, and by intelligence, emotional and achievement tests, and such other methods as are deemed necessary and expedient by him, and to administer an educational program for the exceptional child and to supervise subjects and methods and equipment to be used in the classrooms and schools in so far as they affect the

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handicapped child, and provided, however, that the provisions of this act shall not be mandatory upon any school or school district.

For the purpose of properly educating and caring for such children, the supervisor shall see that the courses of instruction mentioned above shall be made available for all teachers in training and in service. He may recommend ungraded classrooms in schools, home study, special facilities or transportation. He may hold conferences, co-operate, consult, advise and investigate with school superintendents, principals, school facilities, individual teachers, parents, school boards, and other interested groups and persons. He may suggest physical or mental examinations and perform other duties within the limits of this act not specified but directed by the state superintendent of public instruction on approval of the state board of education.

History: En. Sec. 7, Ch. 206, L. 1955.

## CHAPTER 51

#### FEDERAL AID

Section 75-5101. Federal funds—authority to accept. 75-5102. Federal aid to education fund—expenditures.

75-5101. Federal funds—authority to accept. The governor of the state of Montana and the superintendent of public instruction of the state of Montana are hereby authorized on behalf of the state of Montana to request and accept such funds as are now or will be made available under any act of Congress of the United States, or otherwise, for purposes of public school building construction and/or for any other purposes in the operation and maintenance of public schools as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Said moneys shall be deposited by the governor and superintendent of public instruction in a special fund hereinafter created with the treasurer of the state of Montana.

History: En. Sec. 1, Ch. 173, L. 1957.

Collateral References
79 C.J.S. Schools and School Districts
§ 334.

75-5102. Federal aid to education fund—expenditures. There is hereby created in the treasury of the state of Montana a special fund to be known as the "Federal Aid to Education Fund." All moneys deposited into this fund are hereby appropriated and made available to the state superintendent of public instruction of the state of Montana. All moneys in the fund shall be expended for the purpose of public school building construction and/or for any other purposes in the operation and maintenance of public schools as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Such expenditures shall be made under the supervision and discretion of said superintendent of public instruction. Any balance in this fund shall not lapse at any time, but shall be continuously available to the state superintendent of public instruction for the expenditure consistent with this act and acts of the federal government.

History: En. Sec. 2, Ch. 173, L. 1957.

### CHAPTER 52

## LAW ENFORCEMENT ACADEMY

Section 75-5201. Act, how cited.
75-5202. Purpose.
75-5203. Establishment of Montana law enforcement academy.
75-5204. Eligibility.

75-5205. Advisory board. 75-5206. Powers and duties of the Montana law enforcement academy advisory board.

75-5207. Rights of officers attending academy.

75-5208. Expenditure of funds.

75-5201. Act, how cited. This act may be cited as the "Montana Law Enforcement Academy Act."

History: En. Sec. 1, Ch. 7, L. 1959.

75-5202. Purpose. The purpose of this act shall be to establish a Montana law enforcement academy to provide Montana law enforcement officers with a means of securing additional training in the field of law enforcement.

History: En. Sec. 2, Ch. 7, L. 1959.

75-5203. Establishment of Montana law enforcement academy. There is hereby established a Montana law enforcement academy to be located at one of the units of the university of Montana, which unit shall be selected in the manner hereinafter provided. This academy shall be in session for a period not to exceed three weeks in any one year.

History: En. Sec. 3, Ch. 7, L. 1959.

75-5204. Eligibility. All bona fide Montana law enforcement officers shall be eligible to apply for admission to this academy.

History: En. Sec. 4, Ch. 7, L. 1959.

75-5205. Advisory board. The Montana law enforcement academy shall be governed by an advisory board composed of one representative of each of the following organizations or departments to be appointed by the president, chief executive or officer in charge of each of the following departments or organizations: The Montana sheriffs and peace officers association, the Montana chiefs of police association, the county attorneys association, the attorney general's office, the Montana municipal league, the Montana county commissioners association, the Federal Bureau of Investigation, the Montana police protective association and that unit of the university of Montana selected as a site for the academy. The representative of the university unit shall be selected after the site has been determined by the other members of the Montana law enforcement academy advisory board. The members of the advisory board shall be appointed for a term of one year and shall serve without compensation.

History: En. Sec. 5, Ch. 7, L. 1959; amd. Sec. 1, Ch. 28, L. 1961.

75-5206. Powers and duties of the Montana law enforcement academy advisory board. The Montana law enforcement academy advisory board shall have the power and it shall be its duty to:

- 1. Establish rules and regulations for the government and conduct of the advisory board.
- 2. Choose a site for the Montana law enforcement academy at the unit of the university of Montana which in the determination of the board is best suited for the needs of the academy.
  - 3. Establish qualifications for admission to the academy.
- 4. Select from among the qualified applicants those officers who are to attend the academy each year.
- 5. Determine the curriculum and methods of training for the officers attending the academy.
  - 6. Select a faculty for the academy.
  - 7. Establish rules for the conduct of the officers at the academy.
- 8. Award appropriate certificates to the officers who successfully complete their training; which certificate shall be signed by the chairman of the advisory board, the attorney general of the state of Montana and the president of the selected university unit.
- 9. Provide for the keeping of permanent records of enrollment, attendance, graduation and such other records as the board may deem necessary.
- 10. Make a yearly report in writing of the activities of the academy. Copies of this report shall be sent to the governor, attorney general, and secretary of state of the state of Montana.
- 11. Do all other things necessary and desirable for the establishment and operation of the academy not inconsistent with this act or the constitution and statutes of the state of Montana.

History: En. Sec. 6, Ch. 7, L. 1959.

75-5207. Rights of officers attending academy. All officers shall be paid their regular salary during their attendance at the academy, and time spent in such attendance shall not be deducted from the vacation to which any attending officer is entitled. No officer shall lose any pension, seniority or other rights by reason of attendance at the academy.

History: En. Sec. 7, Ch. 7, L. 1959.

75-5208. Expenditure of funds. The expenditure of funds by any city, town, municipality or county for the board, room and travel expenses of the officers attending the academy shall be a lawful expenditure. All counties of the state of Montana shall be allowed to expend an amount of money not to exceed ninety dollars (\$90.00) for the board and room of the officers attending the academy.

History: En. Sec. 8, Ch. 7, L. 1959.







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